CHILDREN AND PAYMENTS UNDER PUBLIC LAW NO. 874, FISCAL YEAR 1968 DATA AS OF JUNE 30, 1968—Continued

State and congressional district numbers	Number of "A" children	Number of "B" children	"A" amount	"B" amount	"A"+"B" amount	Number of district schools
Washington:						
1	190	6,132	$53,916	$870,039	$923,955	6
2	2,162	7,768	614,319	1,103,174	1,717,493	30
3	367	4,538	119,988	648,311	768,299	32
4	1,634	10,466	464,287	1,502,354	1,966,641	46
5	2,575	4,305	734,043	612,331	1,346,375	32
6	5,654	26,944	1,604,436	3,822,950	5,427,385	18
7	175	3,877	49,376	550,088	599,464	11
All	12,756	64,030	3,640,365	9,109,246	12,749,612	175
West Virginia:						
2	50	1,770	12,789	226,365	239,154	6
3		590		75,455	75,455	1
4	1	714	256	91,313	91,569	1
All	51	3,074	13,045	393,134	406,179	8
Wisconsin:						
2	555	2,187	160,020	402,414	562,435	8
3	80	4,014	29,943	740,205	770,148	21
7	124	188	46,412	35,183	81,595	5
8	29	522	10,854	97,690	108,544	3
10	373	521	144,303	101,395	245,698	9
4, 5, and 9 (Milwaukee)	41	2,374	15,346	444,282	459,628	1
All	1,202	9,806	406,879	1,821,169	2,228,048	47
Wyoming: At large	2,113	4,142	1,016,467	641,865	1,658,333	24
Guam: At large	3,647	5,977	932,830	764,399	1,697,228	1
Virgin Islands: At large		330		42,204	42,204	1
Total, all	348,703	2,221,876	115,523,133	347,325,001	462,848,135	4,235

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, OFFICE OF EDUCATION

SCHOOL ASSISTANCE IN FEDERALLY AFFECTED AREAS, TITLES I AND III, PUBLIC LAW 874, AS AMENDED

State or outlying areas	1970 estimated entitlement	1970 budget request	Difference
Total	$650,594,000	$187,000,000	$463,594,000
Alabama	12,129,000	2,362,000	9,767,000
Alaska	17,664,000	13,935,000	3,729,000
Arizona	12,014,000	6,526,000	5,488,000
Arkansas	3,444,000	958,000	2,486,000
California	100,922,000	25,225,000	75,697,000
Colorado	17,227,000	3,109,000	14,118,000
Connecticut	4,410,000	1,503,000	2,907,000
Delaware	2,303,000	1,388,000	915,000
Florida	22,231,000	5,013,000	17,218,000
Georgia	20,606,000	5,749,000	14,857,000
Hawaii	11,914,000	5,741,000	6,173,000
Idaho	3,579,000	1,044,000	2,535,000
Illinois	16,537,000	4,280,000	12,257,000
Indiana	5,673,000	982,000	4,691,000
Iowa	3,366,000	310,000	3,056,000
Kansas	11,168,000	3,302,000	7,866,000
Kentucky	10,402,000	5,604,000	4,798,000
Louisiana	4,375,000	770,000	3,605,000
Maine	3,987,000	2,213,000	1,774,000
Maryland	32,584,000	3,387,000	29,197,000
Massachusetts	20,427,000	5,971,000	14,456,000
Michigan	5,948,000	2,852,000	3,096,000
Minnesota	3,736,000	846,000	2,890,000
Mississippi	3,397,000	1,115,000	2,282,000
Missouri	11,048,000	2,176,000	8,872,000
Montana	6,052,000	3,960,000	2,092,000
Nebraska	5,887,000	2,286,000	3,601,000
Nevada	4,583,000	1,426,000	3,157,000

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, OFFICE OF EDUCATION—Continued

SCHOOL ASSISTANCE IN FEDERALLY AFFECTED AREAS, TITLES I AND III, PUBLIC LAW 874, AS AMENDED—Con.

State or outlying areas	1970 estimated entitlement	1970 budget request	Difference
New Hampshire	$2,745,000	$904,000	$1,841,000
New Jersey	15,358,000	4,251,000	11,107,000
New Mexico	12,539,000	6,147,000	6,392,000
New York	22,777,000	6,027,000	16,750,000
North Carolina	13,414,000	6,864,000	6,550,000
North Dakota	3,203,000	2,664,000	539,000
Ohio	14,023,000	1,182,000	12,841,000
Oklahoma	15,666,000	3,695,000	11,971,000
Oregon	3,407,000	791,000	2,616,000
Pennsylvania	11,324,000	856,000	10,468,000
Rhode Island	4,533,000	1,585,000	2,948,000
South Carolina	10,801,000	3,589,000	7,212,000
South Dakota	4,741,000	2,697,000	2,044,000
Tennessee	8,549,000	705,000	7,844,000
Texas	38,467,000	7,709,000	30,758,000
Utah	8,953,000	1,055,000	7,898,000
Vermont	153,000	4,000	149,000
Virginia	43,624,000	7,442,000	36,182,000
Washington	16,755,000	4,852,000	11,903,000
West Virginia	544,000	18,000	526,000
Wisconsin	2,952,000	571,000	2,381,000
Wyoming	2,120,000	1,275,000	845,000
District of Columbia	7,484,000	374,000	7,110,000
Guam	2,255,000	1,247,000	1,008,000
Puerto Rico	6,131,000	6,067,000	64,000
Virgin Islands	67,000	0	67,000
Wake Island	396,000	396,000	0

CONSTRUCTION-DIFFERENTIAL SUBSIDY

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 258, H.R. 265. I do this so that the bill will become the pending business for tomorrow.

The PRESIDING OFFICER. The bill will be stated by title.

The LEGISLATIVE CLERK. A bill (H.R. 265) to amend section 502 of the Merchant Marine Act, 1936, relating to construction-differential subsidies.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

ORDER FOR ADJOURNMENT UNTIL 12 O'CLOCK NOON TOMORROW

Mr. MANSFIELD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 12 o'clock noon tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADJOURNMENT

Mr. MANSFIELD. Mr. President, if there is no further business to come before the Senate, I move, in accordance with the previous order, that the Senate adjourn until 12 o'clock noon tomorrow.

The motion was agreed to; and (at 6 o'clock and 40 minutes p.m.) the Senate adjourned until tomorrow, Thursday, June 26, 1969, at 12 o'clock noon.

NOMINATIONS

Executive nominations received by the Senate June 25, 1969:

U.S. ASSAY OFFICE

Nicholas Costanzo, of New York to be Superintendent of the U.S. Assay Office at New York, N.Y.

CONFIRMATION

Executive nominations confirmed by the Senate June 25, 1969:

DEPARTMENT OF JUSTICE

Robert B. Krupansky, of Ohio, to be U.S. attorney for the northern district of Ohio for the term of 4 years.

HOUSE OF REPRESENTATIVES—*Wednesday, June 25, 1969*

The House met at 12 o'clock noon.

The Chaplain, Rev. Edward G. Latch, D.D., offered the following prayer:

In every nation he who fears God and does what is right is acceptable to Him.—Acts 10: 35.

O God, our Father, who hast bidden us to let our light so shine before men that they may see our good works and glorify Thee, grant us grace to be faithful leaders of our people, thoughtful in our thinking, wise in our wisdom, genuine in our goodness, and with hearts ever open to Thee. Weave our lives and the life of our Nation into the struggle for freedom and justice and peace in our world.

Guide Thou our President, our Speaker, and these Members of Congress in their endeavor to find a just basis for the ending of war and in their efforts to discover a strong foundation for international cooperation and peace.

Awaken in our people an abounding good will and tie it to an adventurous willingness to work with Thee for the good of all.

To this end we commit our lives in the spirit of Jesus Christ, our Lord. Amen.

THE JOURNAL

The Journal of the proceedings of yesterday was read and approved.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Arrington, one of its clerks, announced that the Senate had passed, with an amendment in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 4297. An act to amend the act of November 8, 1966.

The message also announced that the Senate had passed bills and joint resolutions of the following titles, in which the concurrence of the House is requested:

S. 38. An act to consent to the upper Niobrara River compact between the States of Wyoming and Nebraska;

S. 952. An act to provide for the appointment of additional district judges, and for other purposes;

S.J. Res. 11. Joint resolution to provide for the appointment of Robert Strange McNamara as Citizen Regent of the Board of Regents of the Smithsonian Institution; and

S.J. Res. 126. Joint resolution to increase the appropriation authorization for the food stamp program for fiscal 1970 to $750,000,000.

SECOND CONGRESSIONAL DISTRICT OF MONTANA RETURNS TO THE FOLD

(Mr. OLSEN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. OLSEN. Mr. Speaker, I have an important announcement to make, that the Second Congressional District of Montana has returned to the Democratic fold.

The new Member is John Melcher, of Forsyth, Mont., a former State senator and former member of our house of representatives in Montana. He is a veterinarian and operates as well a feed lot and cattle business. He is a very progressive and fine Representative for Montana and, of course, for the United States.

Mr. ALBERT. Mr. Speaker, will the gentleman yield?

Mr. OLSEN. I yield to the gentleman.

Mr. ALBERT. Mr. Speaker, I thank the gentleman for yielding. This is one of the most important elections held in this country for a long time. It was certainly pleasing to me to hear the gentleman from Montana make his announcement, as I am sure it has been pleasing to all Members on both sides of the aisle, because we are getting into the Congress a very fine addition to our ranks.

I think it is very significant that John Melcher has won an election in a district that has not gone Democratic since 1958, in a district that President Nixon carried last fall by 17,670, and our former colleague, Mr. Battin, carried by 44,136 in the last general election. This district has been Republican by votes of 55 percent in 1962, 54 percent in 1964, 60 percent in 1966, and 68 percent in 1968.

This is the third out of four special elections that have been won by Democrats this year. This is one of two districts that have been held by Republicans. This makes this Congress only two short of the majority we had in the last Congress. We are on our way. We are going to have our majority back.

QUALIFICATIONS FOR APPOINTMENT TO SUPREME COURT

(Mr. DORN asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. DORN. Mr. Speaker, the American people have been shocked beyond measure at some of the recent decisions of our Supreme Court and the conduct of some of its members.

I have the highest esteem for the legal profession and for the judges serving with devotion and dedication, both State and Federal throughout the Nation; however, I do believe that the time has come in a democracy such as ours to set qualifications for membership and tenure of office for the Supreme Court. The time has come to provide for a review of the stewardship of its members. If we are ever to curb the excessive power of the Supreme Court and preserve our freedom, now is the time. The highest ethical standards of conduct are absolutely necessary in the highest court of our land. Standards of conduct are necessary for the Congress and the executive branch as well.

Mr. Speaker, I join many of my colleagues in introducing legislation which would set qualifications and tenure for members of the U.S. Supreme Court. My bill would require that members be natural-born citizens of the United States who have attained at least 35 years of age upon taking office. It would require that a person must have served as either a Federal or State judge or some combination of both for at least 10 years, and at least 5 years of this time shall have been served as an appellate judge. The appointment to the Court would be for 10 years. A Justice may serve for more than one 10-year term with the consent of the Senate. Members of the Court shall hold their offices during good behavior and adherence to high ethical standards.

PERMISSION FOR SUBCOMMITTEE ON FISHERIES AND WILDLIFE CONSERVATION, COMMITTEE ON MERCHANT MARINE AND FISHERIES, TO SIT DURING GENERAL DEBATE TODAY

Mr. DINGELL. Mr. Speaker, I ask unanimous consent that the Subcommittee on Fisheries and Wildlife Conservation of the Committee on Merchant Marine and Fisheries be permitted to sit this afternoon for the purpose of taking testimony during general debate.

The SPEAKER. Is there objection to the request of the gentleman from Michigan?

There was no objection.

COUNTING THE VOTES ON SURTAX EXTENSION

(Mr. HAYS asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. HAYS. Mr. Speaker, in the years gone by I have heard a great deal of moaning and groaning from the other side about arm twisting from the executive branch. A member of the press has just told me the minority leader, the gentleman from Michigan (Mr. GERALD R. FORD), had told the press a few minutes ago he had 170 votes on his side for the tax bill.

Mr. FORD should know more about how many votes he has on that side than I do, but just as a precautionary matter it might be wise for him to review his addition, because I think he may be a little high on his estimate.

THE NEED FOR IMMEDIATE TAX REFORM

(Mr. VANIK asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. VANIK. Mr. Speaker, the delay which has been afforded in the consideration of the surtax in the House of Representatives provides those on both sides of this issue an opportunity to reflect on their positions.

The American people have a right to know how President Nixon stands on basic tax reforms to close major loopholes. They have already heard that he wants to extend the surtax.

How does President Nixon stand on oil depletion allowance reduction, imposition of capital gains at death, minimum tax on wealth, and reducing stock options?

During the past few weeks of deliberation on the surtax and tax reform, it has seemed clear that the administration has had a sufficient majority of its own party in the House to protect loopholes in the law. It is now high time that the mandate of the American people be recognized by the administration, and those gapping tax loopholes be closed forthwith. To do so, it is likely that the Democrats in the House could produce the necessary votes to complement Republican support for this proposition.

If the President does not intend to stand firmly behind tax reform now, then the American people have a right to know.

In the absence of firm commitments in favor of strong tax reforms from the President and his administration, prospects for any action on the surtax will indeed be grim, next Monday, or next month.

I have already been informed by WRIGHT PATMAN, chairman of the House Banking and Currency Committee and Joint Economic Committee, that he has now expressed his opposition to extension of the surtax. It is my hope that any other Members committed to the passage of the surtax will now review this position. The administration must understand that there can be no further action on the surtax without a clear-cut program of meaningful, revenue-producing tax reform. This responsible position deserves the support of every Member of the House of Representatives.

PERSONAL EXEMPTION INCREASE—PROGRESS REPORT

(Mr. SAYLOR asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. SAYLOR. Mr. Speaker, as promised in a letter to our colleagues dated June 13, I am keeping the House posted on the progress of my drive to find additional Members to support a bill to raise the personal exemption amount to

$1,000. Today I have introduced a bill along with 24 of our colleagues that would effect this needed reform in the income tax laws. I am extremely pleased to report that in addition to the Members joining me on this new bill, eight others have introduced similar legislation in the past 2 weeks.

When I began the drive, I pointed out that 155 Members were in support of various proposals to raise the personal exemption amount. As it stands now, there are 185 Members supporting the legislation. The goal is 218 Members and I am more and more confident that the remaining 33 supporters will come forward and join the bandwagon that is forming. I plan to introduce another bill with additional Members, and invite those who wish to join this crusade to call my office.

With 218 Members supporting H.R. 12120 and similar bills, we are convinced that the Committee on Ways and Means will include this reform in the package of tax reform legislation for this year. The real winner in this movement is the middle-income taxpayer. That taxpayer has been ignored far too long, yet he is the one that carries the heaviest burden of Federal income taxes. Raising the personal exemption amount is a first step toward providing this taxpayer with the relief he so justly deserves.

CALL OF THE HOUSE

Mr. WAGGONNER. Mr. Speaker, I make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

Mr. ALBERT. Mr. Speaker, I move a call of the House.

A call of the House was ordered.

The Clerk called the roll, and the following Members failed to answer to their names:

[Roll No. 90]

Andrews, Ala.	Hébert	O'Hara
Ashley	Heckler, Mass.	Ottinger
Blatnik	Hull	Pelly
Buchanan	Joelson	Pepper
Button	Kirwan	Powell
Carey	Kuykendall	Pryor, Ark.
Clark	Landgrebe	Rees
Diggs	McDonald, Mich.	Rosenthal
Esch	Mailliard	Rostenkowski
Fisher	Mann	Satterfield
Gallagher	Miller, Calif.	Scherle
Gettys	Mills	Stephens
Gude	Murphy, N.Y.	Stuckey
Hagan	Nedzi	Thompson, N.J.
Hawkins		Wolff

The SPEAKER pro tempore (Mr. HOLIFIELD). On this rollcall 387 Members have answered to their names, a quorum.

By unanimous consent, further proceedings under the call were dispensed with.

PERMISSION FOR SUBCOMMITTEE ON ELECTIONS, COMMITTEE ON HOUSE ADMINISTRATION, TO SIT DURING GENERAL DEBATE TODAY

Mr. ALBERT. Mr. Speaker, I ask unanimous consent that the Subcommittee on Elections of the Committee on House Administration may sit during general debate today.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Oklahoma?

There was no objection.

PROVIDING FOR AN ADDITIONAL CLERK FOR ALL HOUSE MEMBERS

Mr. FRIEDEL. Mr. Speaker, by direction of the Committee on House Administration, I submit a privileged report (Rept. No. 91–327) on the resolution (H. Res. 357) providing for an additional clerk for all House Members, and ask for immediate consideration of the resolution.

The Clerk read the resolution, as follows:

H. RES. 357

Resolved, That, effective on the first day of the first month which begins after the date of adoption of this resolution, there shall be paid out of the contingent fund of the House, until otherwise provided by law, such sums as may be necessary to increase the basic clerk hire allowance of each Member and the Resident Commissioner from Puerto Rico by an additional $2,500 per annum, and each such Member and Resident Commissioner shall be entitled to one clerk in addition to those to which he is otherwise entitled.

With the following committee amendment:

On page 1, after line 9, insert the following: "SEC. 2. Until otherwise provided by law, the increases in rates of pay provided by section 2(b) of House Resolution 441, Ninety-first Congress, shall be paid out of the contingent fund of the House of Representatives."

The SPEAKER pro tempore. The gentleman from Maryland (Mr. FRIEDEL) is recognized for 1 hour.

Mr. FRIEDEL. Mr. Speaker, House Resolution 357 authorizes each Member, as he needs, one additional clerk, and an increase in his basic clerk-hire allowance of $2,500.

Mr. KYL. Mr. Speaker, will the gentleman yield?

Mr. FRIEDEL. Mr. Speaker, I yield to the gentleman from Iowa.

Mr. KYL. Mr. Speaker, if this proposal called for additional clerk-hire for those Members whose districts are of such size they can justify a need for additional help I would not object to it. I do object.

In the first place, I doubt the need.

In the second place, I believe the timing in this kind of activity is all wrong. At a time we are talking about a surtax and investment credits and increases in salaries for all kinds of groups across the country I believe we not only discredit to our good sense, but also do violence to this institution which we represent.

I hope there are sufficient Members here who are willing to stand up and be counted when we do have a vote on this matter, because I intend to ask for a rollcall.

Mr. GROSS. Mr. Speaker, will the gentleman yield?

Mr. FRIEDEL. I yield to the gentleman from Iowa.

Mr. GROSS. What is the cost of this legislation?

Mr. FRIEDEL. Well, it is almost impossible to predict. Even at the present time every Member does not use his full clerk-hire allowance. It is difficult to say how many will need it. If they do not need the additional allowance, the money is not spent.

Mr. GROSS. Is it not a fact that this can run to about $3.6 million?

Mr. FRIEDEL. Is that $3.6 million?

Mr. GROSS. Yes, sir.

Mr. FRIEDEL. If 100 percent of the Members utilized the additional allowance it could approximate that figure. However, the fact is that a vast number of Members do not currently use all of their allowance and we could hardly expect all Members to utilize this additional sum.

Mr. GROSS. Just a minute. What is the limit on a base pay of $2,500?

Mr. FRIEDEL. I believe it amounts to $7,897.

Mr. GROSS. The gentleman says it is a little more than $6,000. It is $7,500, is it not? The gentleman knows, I am sure, it is at least $7,500. Would he care to multiply 436 by $7,500, as the possible cost of this resolution?

Mr. FRIEDEL. The gentleman is using the case that every Member would take advantage of it, and that has not been proved over the years.

Mr. GROSS. I might just as well assume that every Member would take advantage of it as that not all Members would take advantage of it.

Let me ask the gentleman this question: Where is it proposed to get the money to foot this kind of bill?

Mr. FRIEDEL. Where is what? I did not follow the question.

Mr. GROSS. Where is it proposed to get the money for this kind of bill?

Mr. FRIEDEL. This money will come out of appropriations to the contingent fund.

Mr. GROSS. Out of what?

Mr. FRIEDEL. The contingent fund.

Mr. GROSS. Do the taxpayers provide that money?

Mr. FRIEDEL. Certainly.

Mr. GROSS. It would come out of the pockets of the taxpayers, would it not?

Mr. FRIEDEL. What about the mail we are getting from our taxpayers? Every Member is piled up with mail. The mail is stacked up. It is hard to answer all the letters. We have our staffs working until 7, 8 or 9 or even later at night, and on Saturdays and Sundays. Some Members require large staffs to properly answer their mail and serve their constituents.

Mr. PASSMAN. Mr. Speaker, will the gentleman yield?

Mr. FRIEDEL. I yield to the gentleman from Louisiana.

Mr. PASSMAN. If I understand this legislation correctly, it is to provide additional funds for Members who need an additional secretary for their office or offices to expedite replies to the tens of thousands of letters and inquiries they receive annually from their constituents. Of course, it is on a monthly basis and no unused portion can be carried over from one month to another. The money is not given to the Member, but only makes it possible for him to employ a secretary, with money being paid directly to the secretary and not the Member. Is that correct?

Mr. FRIEDEL. Absolutely.

Mr. PASSMAN. It is a fact that if a Member does not need an additional secretary, then the money is never paid out. In my case, I have not used approximately $160,000 gross of the allotment available to me for clerk hire during my tenure in Congres. I might ask the chairman to verify the fact that if a Member does not need the money for hiring

additional personnel, he does not have to use it, does he?

Mr. FRIEDEL. No, sir.

Mr. PASSMAN. I am of the opinion that many other Members are turning back or not using much of their clerk-hire accounts. I do not believe that I should pass judgment on other Members' needs for a staff for handling their correspondence.

Now, I should like to ask my good friend from Iowa (Mr. GROSS), who is a Member who likes to answer his mail, if he is able to turn back, or maybe I should say not use all of his clerk-hire allowance?

Mr. GROSS. Yes, I have. For 20 years.

Mr. PASSMAN. Well, do you not give other Members credit for possessing the same integrity and turning back or not using the portion they do not need?

Mr. GROSS. I do not know whether they will or not.

Mr. PASSMAN. I think they will. I am willing to trust the Members, and I believe that you can, too.

Mr. GROSS. I do not think any of them need it.

Mr. TEAGUE of California. Mr. Speaker, will the gentleman yield?

Mr. FRIEDEL. I yield to the gentleman from California.

Mr. TEAGUE of California. I happen to have a constituency of approximately 800,000 people. I do not want to stand up here and appear to be trying to be more pure than my brothers, but I have no trouble answering my mail. I do not think this is needed, and I am going to vote against it.

Mr. FRIEDEL. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

Mr. WAGGONNER. Mr. Speaker, I make the point of order that a quorum is not present.

The SPEAKER pro tempore (Mr. HOLIFIELD). The Chair will count.

Two hundred and nineteen Members are present, a quorum.

The question is on the committee amendment.

The committee amendment was agreed to.

Mr. HALL. Mr. Speaker, a parliamentary inquiry. Is the Chair rendering an opinion on the vote on final passage of the resolution?

The SPEAKER pro tempore. The Chair announced the vote on the amendment to the resolution.

Mr. HALL. I thank the Chair.

The SPEAKER pro tempore. The question is on the resolution.

Mr. KYL. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 204, nays 195, not voting 33, as follows:

[Roll No. 91]

YEAS—204

Adams	Annunzio	Bolling
Addabbo	Ashbrook	Brademas
Albert	Ayres	Brasco
Alexander	Baring	Brock
Anderson, Calif.	Barrett	Brooks
	Bell, Calif.	Brown, Calif.
Anderson, Ill.	Biaggi	Brown, Mich.
Anderson, Tenn.	Bingham	Broyhill, Va.
	Blackburn	Burke, Mass.
Andrews, N. Dak.	Blanton	Burton, Calif.
	Boggs	Burton, Utah
Byrne, Pa.	Hanna	Ottinger
Carter	Hansen, Idaho	Passman
Celler	Hansen, Wash.	Patman
Chamberlain	Harvey	Perkins
Chisholm	Hathaway	Pettis
Clark	Hawkins	Philbin
Clausen, Don H.	Hays	Podell
	Hechler, W. Va.	Pollock
Clay	Helstoski	Preyer, N.C.
Cohelan	Hicks	Price, Ill.
Conyers	Hogan	Pucinski
Corman	Holifield	Purcell
Culver	Horton	Rees
Daddario	Howard	Reid, N.Y.
Daniels, N.J.	Hungate	Reifel
Davis, Ga.	Johnson, Calif.	Reuss
Dawson	Jones, Ala.	Riegle
Delaney	Jones, Tenn.	Rivers
Dent	Karth	Rodino
Dickinson	Kastenmeier	Rogers, Colo.
Dingell	Kee	Rogers, Fla.
Donohue	Kluczynski	Ronan
Dulski	Koch	Rooney, N.Y.
Eckhardt	Kyros	Rooney, Pa.
Edmondson	Leggett	Rosenthal
Edwards, Ala.	Long, La.	Roybal
Edwards, Calif.	Long, Md.	Ryan
Edwards, La.	Lowenstein	St Germain
Eilberg	Lukens	St. Onge
Evans, Colo.	McCarthy	Sandman
Fallon	McClory	Scheuer
Farbstein	McCloskey	Schwengel
Fascell	McDonald, Mich.	Shipley
Feighan	McEwen	Sikes
Fish	McFall	Sisk
Flood	Macdonald, Mass.	Slack
Flowers	MacGregor	Smith, Iowa
Foley	Madden	Staggers
Ford, Gerald R.	Mailliard	Steed
Ford, William D.	Mann	Steiger, Wis.
Fraser	Mathias	Stokes
Frelinghuysen	Matsunaga	Teague, Tex.
Friedel	Meeds	Tiernan
Fulton, Pa.	Mikva	Tunney
Fulton, Tenn.	Minish	Udall
Fuqua	Mink	Ullman
Garmatz	Mollohan	Van Deerlin
Giaimo	Moorhead	Vander Jagt
Gibbons	Morgan	Vanik
Gilbert	Morton	Waggonner
Gonzalez	Moss	Waldie
Gray	Murphy, Ill.	Whalen
Green, Oreg.	Nichols	Wiggins
Green, Pa.	Nix	Wilson, Charles H.
Gubser	Obey	Wright
Gude	O'Konski	Wyatt
Halpern	Olsen	Young
Hamilton	O'Neill, Mass.	Zablocki
Hanley		

NAYS—195

Abbitt	Cowger	Jarman
Abernethy	Cramer	Johnson, Pa.
Adair	Daniel, Va.	Jonas
Andrews, Ala.	Davis, Wis.	Jones, N.C.
Arends	de la Garza	Kazen
Aspinall	Dellenback	Keith
Beall, Md.	Denney	King
Belcher	Dennis	Kleppe
Bennett	Derwinski	Kuykendall
Berry	Devine	Kyl
Betts	Dorn	Landgrebe
Bevill	Dowdy	Landrum
Biester	Downing	Langen
Boland	Duncan	Latta
Bow	Dwyer	Lennon
Bray	Erlenborn	Lipscomb
Brinkley	Eshleman	Lloyd
Broomfield	Findley	Lujan
Brotzman	Fisher	McClure
Brown, Ohio	Flynt	McCulloch
Broyhill, N.C.	Foreman	McDade
Buchanan	Fountain	McKneally
Burke, Fla.	Frey	Mahon
Burleson, Tex.	Galifianakis	Marsh
Burlison, Mo.	Gaydos	Martin
Bush	Goldwater	May
Byrnes, Wis.	Goodling	Mayne
Cabell	Griffin	Meskill
Caffery	Griffiths	Michel
Cahill	Gross	Miller, Ohio
Camp	Grover	Minshall
Casey	Hagan	Mize
Cederberg	Haley	Mizell
Chappell	Hall	Monagan
Clancy	Hammer-schmidt	Montgomery
Clawson, Del		Mosher
Cleveland	Harsha	Myers
Collier	Henderson	Natcher
Collins	Hosmer	Nelsen
Colmer	Hull	O'Neal, Ga.
Conable	Hunt	Patten
Conte	Hutchinson	Pelly
Corbett	Ichord	Pickle
Coughlin	Jacobs	Pike
Pirnie	Sebelius	Wampler
Poage	Shriver	Watkins
Poff	Skubitz	Watson
Price, Tex.	Smith, Calif.	Watts
Quie	Smith, N.Y.	Weicker
Quillen	Snyder	Whalley
Railsback	Springer	White
Randall	Stafford	Whitehurst
Rarick	Stanton	Whitten
Reid, Ill.	Steiger, Ariz.	Widnall
Rhodes	Stephens	Williams
Roberts	Stratton	Winn
Robison	Stubblefield	Wold
Roth	Sullivan	Wydler
Roudebush	Taft	Wylie
Ruppe	Talcott	Wyman
Ruth	Taylor	Yates
Saylor	Teague, Calif.	Yatron
Schadeberg	Thompson, Ga.	Zion
Scherle	Thomson, Wis.	Zwach
Schneebeli	Utt	
Scott	Vigorito	

NOT VOTING—32

Ashley	Hébert	Pepper
Blatnik	Heckler, Mass.	Powell
Button	Joelson	Pryor, Ark.
Carey	Kirwan	Rostenkowski
Cunningham	McMillan	Satterfield
Diggs	Miller, Calif.	Stuckey
Esch	Mills	Symington
Evins, Tenn.	Morse	Thompson, N.J.
Gallagher	Murphy, N.Y.	Wilson, Bob
Gettys	Nedzi	Wolff
Hastings	O'Hara	

So the resolution was agreed to.

The Clerk announced the following pairs:

Mr. Hébert with Mr. Cunningham.

Mr. Kirwan with Mr. Bob Wilson.

Mr. Carey with Mr. Morse.

Mr. Miller of California with Mrs. Heckler of Massachusetts.

Mr. Murphy of New York with Mr. Hastings.

Mr. Evins of Tennessee with Mr. McMillan.

Mr. Wolff with Mr. Button.

Mr. Thompson of New Jersey with Mr. Esch.

Mr. Rostenkowski with Mr. Diggs.

Mr. Gettys with Mr. Mills.

Mr. Gallagher with Mr. Stuckey.

Mr. O'Hara with Mr. Pryor of Arkansas.

Mr. Blatnik with Mr. Satterfield.

Mr. Pepper with Mr. Ashley.

Mr. Nedzi with Mr. Joelson.

Mr. Symington with Mr. Powell.

Mr. JOHNSON of California changed his vote from "nay" to "yea."

Messrs. GOLDWATER and ROTH changed their votes from "yea" to "nay."

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PROVIDING FOR CONSIDERATION OF H.R. 7906, INTERSTATE TAXATION ACT

Mr. YOUNG. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 438 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 438

Resolved, That upon the adoption of this resolution it shall be in order to move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 7906) to regulate and foster commerce among the States by providing a system for the taxation of interstate commerce. After general debate, which shall be confined to the bill and shall continue not to exceed two hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary, the

bill shall be read for amendment under the five-minute rule. It shall be in order to consider, without the intervention of any point of order, the text of the bill H.R. 906 as an amendment to the bill. At the conclusion of the consideration of H.R. 7906 for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and the previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit.

The SPEAKER. The gentleman from Texas is recognized for 1 hour.

Mr. YOUNG. Mr. Speaker, I yield 30 minutes to the gentleman from California (Mr. SMITH), pending which I yield myself such time as I may consume.

Mr. Speaker, House Resolution 438 provides an open rule with 2 hours of general debate for consideration of H.R. 7906 to regulate and foster commerce among the States by providing a system for the taxation of interstate commerce. The resolution also makes it in order to consider, without the intervention of a point of order, H.R. 906 as an amendment to the bill. This provision was made in the rule because a question of germaneness could be raised.

H.R. 7906 is identical to H.R. 2158 which was adopted by the House in May of last year, including an amendment identical to H.R. 906 prohibiting the double taxation of personal income.

The bill deals with liabilities for State and local corporate net income taxes, capital stock taxes, and sales, use, and gross receipts taxes with respect to the sale of tangible personal property.

Mr. Speaker, I urge the adoption of House Resolution 438 in order that H.R. 7906 may be considered.

Mr. Speaker, I yield such time as he may consume to the gentleman from Connecticut (Mr. MONAGAN).

Mr. MONAGAN. Mr. Speaker, I rise in support of the rule, and also the bill, H.R. 7906. I shall not have an opportunity to speak on the bill later.

Mr. Speaker, the Interstate Taxation Act of 1969 has the two desirable qualities of being responsive to the States' pressing needs for increased revenues and to the business community's desire to have some degree of uniformity in the varied and constantly changing State and local tax laws. The net effect will contribute to a healthy national economy.

My interest in this legislation is not new. In the 87th Congress I introduced H.R. 3055 defining the power of the States to impose tax assessments on sales in interstate commerce. Many of the principles of that bill were subsequently incorporated into H.R. 2158, the Interstate Taxation Act of 1968, which is identical to the bill presently under consideration.

The need for congressional action in the area of interstate taxation has been long recognized and this remedial legislation is overdue. From the ratification of the Constitution to the present day, courts have had the problem of reconciling the States' interest in taxing enterprises doing business in their jurisdiction with the Nation's interest in maintaining the free flow of interstate commerce. The courts received no direction from Congress in striking this difficult balance and the result has been a multiplicity of State and local tax laws which have proved difficult to enforce and burdensome on business. The effect has been an impediment to the free flow of commerce and a loss of State revenues.

In 1959 in the wake of two Supreme Court decisions holding that a company engaged exclusively in interstate commerce in a State could be required to pay an income tax in that State and the Court's later refusal to review a State court decision upholding an income tax on a company whose only contacts in the State were the solicitation of orders, Congress moved to act in this area. The result was Public Law 86–272, prohibiting State income taxation of companies whose only presence in the State was the solicitation of orders. It also authorized a comprehensive review of taxation of interstate commerce.

A year later, through the enactment of Public Law 87–17, the study was expanded to encompass State taxation. A Special Subcommittee on State Taxation of Interstate Commerce was formed thereunder and commenced the long-awaited review. The measure before us today embodies the recommendations of that study.

H.R. 7906, in six major provisions, offers guidelines to resolve the most serious of the many problem areas of State taxation of businesses engaged in interstate commerce. The bill provides, first, a uniform jurisdictional rule based on the maintenance of a business location for the imposition of corporate net income, capital stock, and sales use and gross receipts taxes with respect to the sale of tangible personal property; second, an optional two factor—property and payroll—apportionment formula for smaller companies for the division of net income or capital; third, rules in the sales and use tax area for locating sales for tax purposes in the State of destination, credits for prior sales or use taxes paid, exemption of household goods for new residents, uniform treatment of freight charges, accounting for local sales taxes, conclusiveness of resale and exemption certificates, and encouragement of direct payment of sales or use tax by business buyers; fourth, prohibits charges for out-of-State audits; and fifth, provides a remedy for geographical discrimination by the States in the sales tax and gross receipts tax area.

The bill clarifies the congressional intent to enact additional remedial legislation in this area whenever necessary by a further provision for a continuing evaluation by Congress of State progress in resolving problems not dealt with in the bill. This section takes on greater significance since the measure in its present form excludes corporations whose gross receipts exceed $1 million. While the burden of complying with the numerous and complex State and local tax laws falls more heavily on small corporations, large corporations are by no means exempt from the hardships presented, and a review of State tax structures may at a future date make clear that larger corporations should be included in the coverage of this remedial legislation.

While some States may experience a slight loss of revenues with the enactment of this bill, the long-term effects of the measure should increase State revenues through an overall increase in economic growth and the greater ease of compliance with, and enforcement of, State and local tax laws. In my own State of Connecticut, it is calculated that the passage of this bill will increase corporate income tax revenues by .13 percent, with no significant loss in sale and use tax revenues.

This bill will benefit State governments, the business community, and the Nation as a whole, and I hope the House will act favorably on this urgently needed measure.

Mr. YOUNG. Mr. Speaker, I yield such time as he may consume to the gentleman from California (Mr. SISK).

Mr. SISK. Mr. Speaker, I rise in opposition to the bill.

Mr. Speaker, I wish to reaffirm my oppositions to the restrictions on State and local powers of taxation contemplated by H.R. 7906, this year's version of the Interstate Taxation Act.

Within California there is united opposition to this legislation by State and local governments and the business community. The opposition of the California Legislature has been expressed by resolution. The adverse views of Governor Reagan have been conveyed to the members of the California delegation. Major business associations, including the California State Chamber of Commerce, California Manufacturers Association, and the California Retailers Association, together with many individual businesses, large and small, are actively working against passage of this bill.

This legislation was generated by a study authorized by Congress in 1959. Any justification for such Federal restrictions existing at that time has now largely disappeared.

All but four sales tax States now grant credit for sales or use taxes paid to another State on the same transaction. Most local sales taxes are administered at the State level. No State currently charges for out-of-State audits. Tax reporting procedures have been simplified.

Of the 39 States which have a corporation income tax law, 23, including California, have enacted the Uniform Division of Income for Tax Purposes Act. Also, 29 of the 41 States with corporation or personal income tax laws are presently using the Federal income tax base, with some modifications, as the base for State purposes. Major portions of the income tax laws in four more States are modeled on the Federal law.

Action by the States in organizing a multistate tax commission and compact will further accelerate this movement toward standardization. On this record, the States have earned, and should be accorded by Congress, an opportunity to resolve any remaining problems of interstate business without being subjected to arbitrary and synthetic rules which would favor one group of taxpayers over another.

Mr. YOUNG. Mr. Speaker, I yield 30

minutes to the gentleman from California (Mr. SMITH).

Mr. SMITH of California. Mr. Speaker, I yield myself such time as I may consume.

Mr. WAGGONNER. Mr. Speaker, I make the point of order that a quorum is not present.

Mr. Speaker, I withdraw my point of order.

The SPEAKER. The gentleman from Louisiana withdraws his point of order.

CALL OF THE HOUSE

Mr. GROSS. Mr. Speaker, I make the point of order that a quorum is not present.

The SPEAKER. The gentleman from Iowa makes the point of order that a quorum is not present, and evidently a quorum is not present.

Mr. WAGGONNER. Mr. Speaker, I move a call of the House.

A call of the House was ordered.

The Clerk called the roll, and the following Members failed to answer to their names:

[Roll No. 92]

Ashley	Hansen, Wash.	O'Hara
Button	Hébert	Ottinger
Carey	Heckler, Mass.	Pepper
Clark	Holifield	Pike
Clay	Ichord	Powell
Cohelan	Joelson	Pryor, Ark.
Cunningham	Kirwan	Purcell
Dickinson	Kleppe	Rarick
Diggs	Leggett	Reid, N.Y.
Edwards, Calif.	McMillan	Rivers
Edwards, La.	Martin	Rosenthal
Esch	Miller, Calif.	Rostenkowski
Evins, Tenn.	Mills	Ruppe
Fallon	Mollohan	Satterfield
Gallagher	Montgomery	Steiger, Ariz.
Garmatz	Murphy, N.Y.	Thompson, N.J.
Gettys	Nedzi	Wilson, Bob
Hanna	Nix	Wolff

The SPEAKER. On this rollcall 377 Members have answered to their names, a quorum.

By unanimous consent, further proceedings under the call were dispensed with.

FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Mr. Arrington, one of its clerks, announced that the Senate had passed without amendment a joint resolution of the House of the following title:

H.J. Res. 790. Joint resolution making continuing appropriations for the fiscal year 1970, and for other purposes.

The message also announced that the Senate had passed with amendments in which the concurrence of the House is requested a bill of the House of the following title:

H.R. 4229. An act to continue for a temporary period the existing suspension of duty on heptanoic acid.

PROVIDING FOR CONSIDERATION OF H.R. 7906, INTERSTATE TAXATION ACT

The SPEAKER. The gentleman from California (Mr. SMITH) is recognized for 30 minutes.

Mr. BOGGS. Mr. Speaker, will the gentleman yield?

Mr. SMITH of California. I yield to the gentleman.

Mr. BOGGS. Mr. Speaker, I appreciate the gentleman yielding.

I take this time to inform the House that in the light of the message which has just come from the Senate that it is my intention, after disposition of the rule now before the House, to ask unanimous consent to consider the Senate amendments to that bill which involves the extension for 31 days of existing withholding rates.

Mr. BURTON of California. Mr. Speaker, will the gentleman from California yield?

Mr. SMITH of California. I yield to the gentleman.

Mr. BURTON of California. Mr. Speaker, I may object to the unanimous-consent request.

I would like to ask the distinguished gentleman from Louisiana if he can inform the House as to the status of the Senate repeal of the AFDC freeze that is costing my own community and our own State untold millions of wasted administrative dollars while they await congressional action.

I wonder if the distinguished gentleman from Louisiana can give the House a report on that very vital matter that is affecting most of the States of the Nation including our own State at considerable taxpayer expense while we await the action of the House on that matter.

Mr. Speaker, our own Governor of California, Governor Reagan, has repeatedly asked that we deal with this.

I merely want to pin down while we are in this more favorable context, whether or not the House is going to fish or cut bait on this matter that is of such great concern to my own local community and to our State government as well.

Mr. BOGGS. Mr. Speaker, will the gentleman from California yield?

Mr. SMITH of California. I yield to the gentleman.

Mr. BOGGS. Mr. Speaker, it is my information, may I say in reply to the gentleman from California, that the matter is on the Speaker's desk, and that the House has not yet agreed to a conference, and I have not as of this minute been authorized by the chairman of the committee to agree to a conference.

I will say to the gentleman that so far as I am personally concerned, I have been opposed and continue to be opposed to that freeze.

Mr. BYRNES of Wisconsin. Mr. Speaker, will the gentleman from California yield?

Mr. SMITH of California. I yield to the gentleman.

Mr. BYRNES of Wisconsin. I can say to the gentleman that I have been in support of lifting that freeze and the ceiling imposed upon the State under the present law and relieve them from the problems they would have to face up to on June 30.

Certainly, I think it is incumbent that we act on the ceiling before June 30.

I do not know what the leadership has done with respect to going to conference and whether there is a hangup somewhere.

Mr. BURTON of California. Mr. Speaker, will the gentleman from California yield?

Mr. SMITH of California. I yield briefly to the gentleman.

Mr. BURTON of California. Mr. Speaker, as the distinguished gentleman from Wisconsin knows, and as does the distinguished gentleman from Louisiana, this problem was brought to the attention of the Committee on Ways and Means several months ago. It was predicted then that there would be millions of taxpayers' dollars wasted unless we dealt with this matter in some definitive way before the end of the fiscal year.

This matter has not been dealt with and the taxpayers of this country have been forced, as a result of our inaction, to waste literally millions of dollars reshuffling welfare applications.

This is at a very late stage of the game. The House is not going to be in session tomorrow, as I understand it because of the death of our distinguished colleague, Mr. Bates, of Massachusetts. We may well not be in session on Friday and I do think it is about time that the House acted responsively on this matter and definitively and I intend if I am on the floor, before acceding to the unanimous consent request, I believe I have a right as one Member to give the firmest of assurances at least to the people of my community and the people in our State that we are not going to have this sword of Damocles hanging over their head, while we contemplate, if you will pardon the expression, this legislative navel.

Mr. SMITH of California. Mr. Speaker, may I suggest to the distinguished gentleman that he endeavor to get the answer to that question before the unanimous-consent request is made or to obtain it if possible when the unanimous-consent request is made under a reservation of objection at which time Members can go into this question.

I would like to get into the matter at hand and get it over with if we possibly can.

Mr. Speaker, this resolution, House Resolution 438, provides for an open rule with 2 hours of general debate for the consideration of the bill (H.R. 7906) to regulate and foster commerce among the States by providing a system for the taxation of interstate commerce. The rule also makes in order the consideration of H.R. 906, introduced by the gentleman from Iowa (Mr. SMITH).

H.R. 906 has to do with imposing taxes on individuals. The main statement or explanation of it is that no State or political subdivision shall impose for any taxable year an income tax on the income of any individual which was earned or derived during any period while the individual was not a resident of the State, except to the extent the income was earned or derived from sources within the State.

The Rules Committee felt that this was a good place to consider that question, in this Interstate Taxation Act.

H.R. 7906 is identical with H.R. 2158, which passed the House on May 22, 1968 by a vote of 284 to 89. H.R. 906 is identi-

cal with an amendment placed into H.R. 2158 on the House floor when that matter was considered last year. The bill did not pass the other body.

Mr. Speaker, as the Members know, this is somewhat of a controversial bill. Some States are for it, some are against it. Some businesses in one State are for it, and some of the same businesses in another State are opposed to it. The officials of the State of California are opposed to it. I personally favor the bill. I think it is a start in the right direction toward having some equalization of taxes throughout the 50 States.

The purpose of the bill is to establish Federal criteria to be followed by the several States in their taxing policies with respect to out-of-State businesses.

Until 1959 such businesses had few problems with the States. If they were not physically in a State with a business location—a sales force and a stock of goods—they were as a general rule not taxed because they were an interstate corporation and State taxation was considered to be an encumbrance on interstate commerce. In 1954 the Supreme Court held that a corporation was taxable on the portion of its income earned within the taxing State even if it were not engaged in intrastate business there. In 1960 the Court held that a State could require sellers in interstate commerce to collect its sales and use taxes. This second decision, more than the first, spurred Congress to action. H.R. 7906 is an attempt to define what contacts a business must have within a State to come within its jurisdiction for tax purposes.

Three taxes, net income, capital stock, and a gross receipts tax are covered by title I. Under the bill, no firm doing less than $1 million Federal net taxable income will have a tax obligation to any State unless it has a business location within the State. Three tests are provided, any one of which will give the firm a business location for tax purposes: First, owned or leased property within the State; second, a full-time employee whose duties are more than taking orders; or third, maintaining a stock of goods for sale.

Under title II, if a firm is liable for State income taxes, it has an option of determining how much of its income is subject to taxation. Current State formulas use three factors: payroll, property, and sales within the State. The Federal formula does not include sales, only the first two. This has caused some concern among a number of States.

Title III covers sales and use taxes and their collection by out-of-State sellers. Here no $1 million limitation applies; all interstate companies selling in a State can be required to collect and remit such taxes if they meet the jurisdictional tests provided by the bill. An interstate sale must have its "destination" in a State in order for that State to impose a sales tax or require the seller to collect it. The three tests of title I are carried over—owned or leased property, full-time employee, and an inventory of goods—and a fourth test is added; jurisdiction is found if the company regularly makes household deliveries in the State. As in title I, only one test needs to be met to subject the company to taxation.

Mr. Speaker, I urge the adoption of the rule.

Mr. HALL. Mr. Speaker, will the gentleman yield?

Mr. SMITH of California. I yield to the gentleman from Missouri.

Mr. HALL. I appreciate the gentleman yielding. Is it his understanding that the waiver of points of order applies only to the text of the bill H.R. 906, which will be submitted as an amendment, and that the rest of the bill H.R. 7906 will be subject to a point of order?

Mr. SMITH of California. H.R. 906 relates to another subject matter. It would not be germane on the bill as a whole. The bill H.R. 7906 is subject to amendment. The bill H.R. 906 would be in order and could not be objected to. As far as objection to any other part of H.R. 7906, the rule does not contain any waiver of points of order. The rule provides for the offer by the gentleman from Iowa (Mr. SMITH) of H.R. 906 as an amendment to the bill, and H.R. 7906 can be amended by the House during the debate.

I have no further requests for time. I reserve the balance of my time.

Mr. BOLLING. Mr. Speaker, I yield 1 minute to the gentleman from Missouri (Mr. HUNGATE).

Mr. HUNGATE. Mr. Speaker, I simply request my colleagues to be sure to check with their local governments, their State governments, and Governors, and State legislatures as to the position they will take on this bill on State taxation on interstate commerce H.R. 7906.

Mr. BOLLING. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

APPOINTMENT OF CONFEREES ON H.R. 8644, SUSPENSION OF DUTY ON CRUDE CHICORY ROOTS

Mr. BOGGS. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the bill (H.R. 8644) to make permanent the existing temporary suspension of duty on crude chicory roots, with Senate amendments thereto, disagree to the Senate amendments, and agree to the conference asked by the Senate.

The SPEAKER. Is there objection to the request of the gentleman from Louisiana?

Mr. GROSS. Mr. Speaker, reserving the right to object, this would send the bill to conference?

Mr. BOGGS. If the gentleman will yield, that is correct.

Mr. GROSS Are the amendments germane to the bill? Does the gentleman know?

Mr. BOGGS. That is a matter the conferees would have to determine in any event. All this does is send the bill to conference.

Mr. GROSS. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Louisiana? The Chair hears none, and appoints the following conferees: Messrs. MILLS, BOGGS, WATTS, BYRNES of Wisconsin, and UTT.

SUSPENSION OF DUTY ON HEPTANOIC ACID

Mr. BOGGS. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H.R. 4229) to continue for a temporary period the existing suspension of duty on heptanoic acid, with Senate amendments thereto, and concur in the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

On page 1, after line 6, insert:

"SEC. 2. (a) Section 3402 of the Internal Revenue Code of 1954 (relating to income tax collected at source) is amended—

"(1) by striking out 'June 30, 1969' in subsection (a)(1) and inserting in lieu thereof 'July 31, 1969';

"(2) by striking out 'July 1, 1969' in subsection (a)(2) and inserting in lieu thereof 'August 1, 1969'; and

"(3) by striking out 'July 1, 1969' in subsection (c)(6) and inserting in lieu thereof 'August 1, 1969'.

"(b) The amendments made by subsection (a) shall apply with respect to wages paid after June 30, 1969."

Amend the title so as to read: "An Act to continue for a temporary period the existing suspension of duty on heptanoic acid, and to continue for one month the existing rates of withholding of income tax."

The SPEAKER. Is there objection to the request of the gentleman from Louisiana?

Mr. BYRNES of Wisconsin. Mr. Speaker, reserving the right to object, I think we should have an explanation, and I yield to the gentleman from Louisiana for an explanation of the Senate amendments.

Mr. BOGGS. Mr. Speaker, I appreciate the gentleman from Wisconsin yielding and I appreciate the request of the gentleman from Wisconsin, the distinguished ranking minority member of the Ways and Means Committee.

The purport of this Senate amendment is to extend the "surcharge" withholding rates for the 1-month period from June 30, 1969, through July 31, 1969. It has no permanent effect insofar as tax liability is concerned, but it is vital for the administration of the Internal Revenue Code. As of now it would be literally impossible for the employers of the country to change their computerized machinery that is required to set up different withholding tables in the various firms in the country. So that is all it does. It is merely a continuation of the present situation so that there will be time to consider the surcharge and related matters without upsetting the present withholding.

Mr. BYRNES of Wisconsin. Mr. Speaker, I address this question also to the gentleman from Louisiana. I understand this also is essential for those employers who do not have the luxury of a computer and who have to make up these withholding tables and payrolls and do it within a day or two.

If we did not do this, we would revert, unless the surtax extension was signed by the President by Monday night, to the old withholding tax that was in effect prior to the imposition of the surtax.

Then, if we did extend the surtax at some point, they would have to revert

again and go back to the current tables. This would create, as I understand it, an intolerable situation for workers and employers.

Mr. BOGGS. Plus an intolerable situation in the Internal Revenue Service in attempting to administer the law, whatever it might be.

Mr. BYRNES of Wisconsin. Mr. Speaker, I yield to the gentleman from California (Mr. BURTON) if he desires to have me do so.

Mr. BURTON of California. I thank the gentleman from Wisconsin.

I had previously asked the gentleman whether at this very late stage of the game it was the gentleman's impression, assuming the gentleman had a point of view with reference to the AFDC freeze, whether or not the position requested by the Secretary of Health, Education, and Welfare, the position requested by most of the Governors of the country, the position requested by every single authority in the field of public assistance, was going to be given favorable recognition by a repeal of this provision which has been found to be unworkable, a repeal that is now in conference?

If I understood the gentleman from Wisconsin correctly, I understood it was the gentleman's indisposition to concur in the Senate amendments in conference. Is that understanding correct?

Mr. BYRNES of Wisconsin. Well, let me suggest to the gentleman, I believe it is impossible to tell the gentleman what can happen in a conference. I am going to try to support the position of the House. But as far as this issue is concerned, I believe the House disposition is to recede and concur basically in the amendment adopted by the Senate.

I believe our position in the House is, if I would interpret it correctly as a conferee, that the ceiling should be lifted. It would be my intention to be inclined to go along with the objective of the Senate amendment. I believe that is generally what the gentleman desires.

Mr. BOGGS. Mr. Speaker, will the gentleman yield?

Mr. BYRNES of Wisconsin. I yield to the gentleman from Louisiana.

Mr. BOGGS. I will state I personally concur in the position taken by the gentleman from Wisconsin. Until this moment we were unable to make any statement to the gentleman. Unless we have the conference and unless we act, the gentleman will have no relief when June 30 arrives.

Mr. BURTON of California. The gentleman from California had previously queried the gentleman from Wisconsin. I understand very clearly what the gentleman has said.

Before I make my objection to this unanimous-consent request I will pose the question just one more time.

This matter has been pending before the committee, and the gentleman is a distinguished member of the Committee on Ways and Means. The question has been pending for a number of years. I am sure the gentleman has an opinion. I would merely like to have the gentleman's view as to whether or not he will support his administration's position that the freeze be repealed. That lends itself to a "yes" or "no" answer. If the gentleman feels this is not the proper forum for such a response, it would be my intention, as I have told the gentleman privately, to withhold consent.

This matter has been unduly delayed, perhaps just as the surtax matter has been unduly delayed. The Ways and Means Committee has an onerous schedule. We are now confronted with some difficult problems. They will be difficult problems in the months ahead. Perhaps we can get this one question behind us.

Mr. BYRNES of Wisconsin. Mr. Speaker, in conjunction with my reservation, let me respond to the gentleman in this way: In the first place, I do not intend to be threatened as to what my position is or is not. I am very glad to state to the gentleman what my current general feeling is with respect to the freeze. I will say it is this, Mr. Speaker: I believe the freeze would do grave injustice—and I stated this months ago—and that the freeze should be lifted. This is the freeze that under law would go into effect July 1. I believe it would be impossible for the States to live within that freeze which was imposed a year ago.

I still feel, however, we have a very serious problem, and therefore the freeze should be lifted and the States be permitted to continue under the present basic law so far as receiving aid for dependent children from the Federal Government is concerned.

I further believe that there is a problem that we have to face up to at some time or other as to how we cope with the very serious problem of dependent children and dependent children's families in this welfare area. This is a most serious problem for the States and the Federal Government as well as the people involved. I would be inclined in my own personal view in order to keep that currently before us not necessarily just to eliminate the freeze but to lift the freeze so as to give us an opportunity to look into what might be a desirable approach in this very difficult area. As I say, the freeze has to be lifted for a period and for a period sufficient for the States to make any plans that they have to make. It would be my thought that it should be lifted for at least a year, but in that time and so as to keep it before the committee and keep the issue alive, I think it is well that we do have our attention constantly focused on it by not repealing the ceiling completely. That is my personal view. As to what would happen in conference, I think it is completely inappropriate to suggest as to what one can or cannot do in a conference. As far as I am concerned, I point out that I am one individual Member, but I do not intend to be browbeaten or blackmailed by having it suggested that I have to take a position that conforms with that of the gentleman from California as a conferee of this House. As a conferee I intend to do what I think is best for this House and for this country and not just act on the basis of what the gentleman from California believes that he thinks is right.

Mr. BURTON of California. Mr. Speaker, I am sure the gentleman from Wisconsin does not mean to imply that the gentleman from California is citing only his own personal views on this matter. If the gentleman was listening—and he always does, and so therefore I am sure that he did listen—to the recital of the great number of authorities and responsible people of both political parties concerned with regard to the undue delay on this question, I am sure that the gentleman realizes that it was not merely a personal opinion. I am sure that the gentleman from Wisconsin further realizes that if we should take such immediate action on this withholding matter, the gentleman from California has a right—nay, I say he has a duty—to get the same kind of immediate action as it affects the potential recipients of AFDC who may be adversely affected either on July 2, 1969, or 1970 so that they get the same kind of immediate relief.

Mr. BYRNES of Wisconsin. Just so that the record may be clear—and then I will yield to the gentleman from Louisiana—I have told the gentleman from California months ago of my desire to cooperate and to see that this freeze was lifted. I thought it would be absolutely improper for any of the States affected by this to have to put into effect what would result from a freeze. I assured him of my cooperation and still assure him of my cooperation and belief that the States should not have to face up to the problem that the freeze would impose. I think it is very unfortunate, Mr. Speaker, that because of a situation which I think the gentleman from California understood, that was beyond the control of any of us, there was a gap here in taking care of this Senate amendment when it came over. I think it is very appropriate that the gentleman from California called our attention today to the fact that it was sitting here on the Speaker's desk and a conference had not been appointed and the conferees had not met. I think it is most appropriate that this matter be resolved immediately. If I had known about it, I would have done what I could have to see that it did go in that direction. Conferees have now been appointed, and I am sure that they are going to meet and do what is right as far as this House, and as far as the country are concerned. Why we have to be threatened with creating chaos for the workers of this country and the employers of this country in making out their payroll next week is beyond me. That we should be threatened that we will create that chaos unless we agree ahead of time on what as conferees we are going to do and what i's will be dotted and what t's will be crossed I think is absolutely unreasonable and preposterous.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Louisiana?

Mr. BURTON of California. Mr. Speaker, I object.

The SPEAKER. Objection is heard.

INTERSTATE TAXATION ACT

Mr. RODINO. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the

State of the Union for the consideration of the bill (H.R. 7906) to regulate and foster commerce among the States by providing a system for the taxation of interstate commerce.

The SPEAKER. The question is on the motion offered by the gentleman from New Jersey.

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 7906, with Mr. MONAGAN in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

The CHAIRMAN. Under the rule, the gentleman from New Jersey (Mr. RODINO) will be recognized for 1 hour, and the gentleman from Minnesota (Mr. MACGREGOR) will be recognized for 1 hour.

The Chair recognizes the gentleman from New Jersey.

Mr. RODINO. Mr. Chairman, I yield such time as he may consume to the gentleman from New York, the distinguished chairman of the House Committee on the Judiciary (Mr. CELLER).

Mr. CELLER. Mr. Chairman, the Interstate Taxation Act—H.R. 7906—is a measure which has already won the strong approval of the House of Representatives. In the last Congress, the Committee on the Judiciary reported an identical bill—H.R. 2158—sponsored by former Representative Edwin Willis, of Louisiana. Last year that bill passed the House by a large majority of 284 to 89. Unfortunately, however, there was not sufficient time remaining in the session for full consideration of the bill by the other body.

As I pointed out during the debate last year, the Interstate Taxation Act, H.R. 7906, embodies a program that is essential if we are to preserve one of our most cherished economic principles—the principle that our national market is common to all of our States and that the flow of interstate commerce ought not to be unduly impeded. When our States joined together in ratification of the Constitution in 1789, they enshrined this principle in the commerce clause and affirmed it as one of the cornerstones of their Union. Throughout our history, the commerce clause has been one of the major sources of our economic strength. In recent years, however, a serious erosion of the principle of the commerce clause has taken place due to the proliferation of State and local taxes.

In 1959, problems arising from State taxation of interstate commerce reached critical proportions in the celebrated Northwestern Portland Cement Company case. The Supreme Court made it clear that only Congress can appropriately deal with the vexing problems that arise from a plethora of conflicting State and local tax laws. At that time, both the Court, as well as the business community, turned to us for guidance. As a result, the late Senator Harry Byrd, of Virginia, and the late Representative Francis Walter—both of whom served in Congress with great distinction—sponsored legislation which gave Congress a mandate to remedy the situation. It was this legislation, Public Law 86–272, that gave rise to the extensive study that the Judiciary Committee conducted.

The Special Subcommittee on State Taxation of Interstate Commerce, which was initially chaired by former Representative Edwin Willis, of Louisiana—another legislator of great distinction—began its study 8 years ago. At that time it was already apparent that interstate business was being seriously burdened. In the ensuing years the situation has grown progressively worse, and there has been an even greater outcry for relief.

With all 50 States and many thousands of local governments each taxing interstate commerce according to their own individual sets of rules, the cost of compliance often exceeds the actual amount of tax liability. Small businesses located in one State are subjected to taxation in far away States in which the businessman owns no property, has no employees, and is without political representation. Often tax liabilities are determined by negotiations with the tax administrator rather than by clearly established rules of law.

As the States reach farther and farther to impose smaller and smaller liabilities on more and more out-of-State companies, tax administrators are called on more and more to enforce the unenforceable and businessmen to comply with the impossible. Noncompliance and nonenforcement are the rule rather than the exception. Since the system has grown unworkable, it is essential that a national policy of the type embodied in H.R. 7906 be adopted which will preserve the taxing autonomy of our States and at the same time reaffirm the basic principle of the commerce clause.

In the last Congress, the House of Representatives clearly recognized the need for such a policy when it passed this proposal by an overwhelming majority.

Mr. Chairman, the solutions provided by this proposal are all based on the obvious necessity for Congress to provide jurisdictional standards—so that no State can infringe upon its sister States by imposing its own nationwide tax system. The jurisdictional rule established in this bill is logical, simple, and fair. Reduced to its essence, this bill provides that generally no businessman will be taxable in any jurisdiction in which he does not either employ labor or maintain tangible property. Such a rule is not only consistent with basic notions of fair play, it is also in accord with the practical realities of our modern economy. At the same time, the rule accords sufficiently with the revenue requirements of the States so as to preclude the possibility of depriving any State of a significant amount of revenue.

The passage of H.R. 7906 will be of immense benefit to the business community, to the integrity of our Federal system, to the vitality of our States, and to the efficient functioning of our courts. I strongly urge that the House of Representatives once again adopt this measure. It was sorely needed when we passed it by an overwhelming majority last year. Today the need for its prompt enactment is even greater.

Mr. MACGREGOR. Mr. Chairman, I yield such time as he may use to the distinguished ranking minority member of the Committee on the Judiciary, the gentleman from Ohio (Mr. MCCULLOCH).

Mr. MCCULLOCH. Mr. Chairman, I rise in support of H.R. 7906, the interstate taxation bill. On January 23 of this year, I introduced H.R. 4178 which is identical in all respects with the bill we are now considering and which is identical with the bill that was reported by the Judiciary Committee last year and was passed last year by this body. The vote was overwhelming: 284 to 89, as Congressman SMITH of California has indicated.

The history of this legislation reflects well on the Congress.

There are some who criticize Congress as the fallen branch of our tripartite Government. It is said that Congress only reacts to Executive proposals but does not imaginatively and creatively seek solutions to problems.

To those doubters, I proffer H.R. 7906. This legislation is indeed, the child of Congress.

Congress perceived the need.

Congress initiated the study.

Congress drafted the bill.

We have spent 7½ years of labor on this bill—four volumes of hearings and four volumes of exhaustive and thorough analysis of the problem.

The bill accurately reflects those tireless efforts. It sets a standard of excellence for the legislative process. Thus, with pride, I lend my name to that long list of men who support this bill.

The problem of multiple State taxation of businesses operating in interstate commerce is not a simple one. The issues are many and complex.

But ultimately, the search has been for some golden mean, some rule to balance the competing interests of State revenues and of free commerce. The bill achieves a golden mean. It is fair.

There are those who would argue that a State should be allowed to tax a business even though it is in no way located in the State.

There are those who would argue that a State should be allowed to require a business to police the collection of the State's sales and use tax even though it is in no way located in the State.

I can well appreciate how these arguments would appeal to State and local tax collectors. Their task is to raise revenue and to do so as painlessly as possible.

Certainly, it is advantageous for State and local tax collectors to deflect the impact of their taxes onto those without political representation in the State.

But is that fair? Is that good for the country?

Today, American business is burdened with conflicting, chaotic, and multiple taxation by the States. It is time for Congress to act.

Congress has invoked the commerce clause of the Constitution to enact laws in the areas of crime, welfare, and civil rights. Now it invokes the commerce clause to foster the interstate flow of goods. Clearly, this legislation is constitutional.

For we are once again confronted with the problem that led to the calling of the Constitutional Convention of 1787, the imposition of State taxes on out-of-State businesses. Our forefathers recognized how mischievous this problem could be. They realized that a national common market was the necessary predicate of national prosperity.

I stand before this body today to reaffirm the constitutional principle of the American common market. That principle has served us well. We are the richest nation on this earth. That principle merits the continued support of every Member of this body.

No one can deny that State taxation of interstate commerce is a definite problem. No one can deny the right and the duty of Congress to remedy this problem. Yet the States have voiced two practical objections to this legislation.

The first is loss of revenue. This objection is without merit. The record shows that the States—at present—are not collecting taxes from businesses which are not located in the taxing State. The Special Subcommittee on Interstate Taxation found that there was 97.5 percent noncompliance in the income tax area and 93.5 percent noncompliance in the sales and use tax area—volume 1 at 303 and volume 3 at 729.

That is a despicable situation. Impossible laws breed disrespect for law at a time when respect for law is essential to our national well-being. Impossible laws allow tax commissioners to exercise wide discretion to discriminate and to harass businesses with impunity. Impossible laws jeopardize the very existence of small businesses. For in most States, there is no statute of limitations on tax liability. Thus every year, the small businesses—many of whom do not realize that they are liable—get deeper and deeper in debt.

The second objection is that the bill favors interstate business over local business. This is not true. There are no tax havens in this country, and none are created by this legislation. The bill operates not to favor interstate business by making it tax-free but rather to promote uniformity and efficiency in the collection of State taxes.

To those who worry about their local industry, let me say again that the out-of-State competition is not complying with the local tax laws, because, realistically, they are impossible to enforce. Thus, by establishing that interstate business need no longer do the impossible, the bill does not tip the balance against local industry.

Moreover, there is a provision in the bill—often overlooked—that would extend State sales-and-use-tax jurisdiction to areas now off limits to tax collectors.

In *Miller Bros. Co.* v. *Maryland*, 347 U.S. 340 (1954), the Supreme Court ruled that a State could not require an out-of-State business to collect sales and use taxes for the State even if the business regularly delivered products in its own vehicles across State lines to consumers within the State.

Section 101(2) of the bill changes that result. A State would be permitted to require the out-of-State business to collect the sales and use tax if it "regularly makes household deliveries in the State." This would not only fill State coffers but would also protect local retailers who now suffer from unencumbered competition from across-the-border businessmen.

Local businessmen in border areas have been seriously disadvantaged by the Miller Bros. rule. We change that. H.R. 7906 would permit businessmen on both sides of a border to compete according to the same rules.

Hence, it is evident that the two objections are groundless. The bill does not rob States of their revenue, nor does it discriminate against local business.

In summary, the bill lays down a golden rule. It strikes a balance by invoking commonsense in an area of confusing, chaotic, and complex tax laws.

But beyond that, on a higher level, this bill says much for the integrity of the lawmaking process. In the 13th century, the philosopher, Thomas Aquinas, discussing the nature of law, wrote that a law that is impossible to obey is not really a law at all.

Certainly, the maze of State tax laws is impossible to obey. There are thousands of small businesses that employ fewer than five people yet market their products nationally.

How is it possible for such a business to comply with the 38 corporate income tax laws, the 38 sales and use tax laws, the 37 capital stock tax laws, and the eight gross receipts tax laws, all imposed by the States?

Moreover, how is it possible for such a business to comply with over 2,300 sales and use tax laws, over 1,000 gross receipts tax laws, and over 100 corporate income tax laws which are imposed at the local level?

Certainly, in exercising our constitutional duty to promote the free flow of interstate commerce, we as lawmakers must fashion a rule that is possible to obey, a rule that will command the respect of the business community, a rule that will preserve the integrity and the obligation of law.

H.R. 7906 is such a rule.

I urge its passage, and I ask your support.

The CHAIRMAN. The Chair recognizes the gentleman from New Jersey.

Mr. RODINO. Mr. Chairman, I yield myself such time as I may require.

Mr. Chairman, the bill before us today—the proposed Interstate Taxation Act—is the product of one of the most comprehensive and exhaustive studies ever conducted by Congress. It is a bill which has fundamental importance for our Nation's commercial life, and has the warm endorsement both of industry and labor. This bill passed the House of Representatives last year by a strong majority of 284 to 89. Unfortunately, however, passage by the House occurred too late in the session for the Senate to consider the bill.

H.R. 7906 is identical to the bill that was reported in the last Congress by the Committee on the Judiciary. As many of you will recall, that bill was later amended on the floor to include a provision prohibiting the double taxation of personal income, which was sponsored by Representative NEAL SMITH of Iowa. Since the Judiciary Committee conducted no study of the personal income tax problem, we felt that we ought not to include this provision in the bill. However, I personally support the amendment and plan to vote for it when it is offered.

It has now been almost a decade since the Judiciary Committee first received a mandate from Congress to study the problems of State taxation of interstate commerce. In 1959, the Supreme Court—after having handed down more than 300 full-dressed opinions relating to the taxation of interstate commerce—made it clear in the celebrated Northwestern Portland Cement case that it looked to Congress to provide reasonable standards. At the same time, the business community found itself so overwhelmed by diverse and chaotic State and local tax requirements that it, too, turned to Congress to establish standards. As a result, in the 86th Congress, we enacted Public Law 86–272 which gave rise to the Special Subcommittee on State Taxation of Interstate Commerce.

Starting in 1959, we established an advisory committee of distinguished experts from the business community, from the academic community and from State governments. From 1961 to 1966, under the chairmanship of Representative Edwin Willis, the special subcommittee devoted 5 years to an extensive study communicating with every State tax administrator in the United States, officials of numerous cities and counties, and literally tens of thousands of businessmen all over the country. The material published by us occupies eight full volumes and has become the definitive work on this subject.

Mr. Chairman, our study amply documents the need for this legislation.

We ascertained that of the several hundred thousand companies engaged in interstate commerce half have fewer than 20 employees, a substantial number have fewer than 10 employees, and a significant minority have fewer than five. Yet, these companies typically sell their products in many States, and even among those companies which are so small that their annual gross proceeds are less than $200,000, a considerable number sell their products in a truly nationwide market.

The number of jurisdictions taxing these companies is staggering. There are in effect at the State level 41 sets of corporate income tax laws, 44 sales and use tax laws, 37 capital stock laws and eight gross receipts tax laws of general applicability. In addition, to compound further the chaos and confusion, business taxes are rapidly proliferating on a local level—with sales taxes already imposed by about 3,000 localities, gross receipts taxes by over 1,000 and corporate income taxes by more than 200 local governments.

Under the circumstances, it is not surprising that this chaotic system has broken down. The business community simply cannot afford the facilities necessary to comply with the present rules. Correspondingly, the States themselves do not have the facilities necessary to enforce their laws. As a result, noncom-

pliance and nonenforcement are the rule rather than the exception.

In addition to imposing insurmountable compliance burdens on the business community, the present system of State taxation of interstate commerce is also replete with inequities that result in the overtaxation of some taxpayers and the undertaxation of others. In the income tax area, for example, some companies are now taxable on more than 100 percent of their profits while other similarly situated companies are paying a tax on much less than 100 percent. Clearly this is a situation which Congress has the responsibility to eliminate.

At the same time the present system also contains a number of inequitable laws that give to locally based companies benefits that are not available to competitors who are based outside of the taxing State. There is no doubt that such laws both run counter to the basic purposes of the commerce clause of the Constitution and violate sound tax principles of evenhandedness.

In addition to representing a serious threat to our Nation's economic life, the present system has created among our taxpayers a highly undesirable attitude. Faced with unfair and unworkable rules, taxpayers generally have developed a widespread resistance to the assumption of State tax liabilities. Rather than file tax returns under circumstances in which the tax itself is often exceeded by the cost of preparing the return, taxpayers in many cases have understandably disregarded the State and local laws. If this situation is to be remedied—and State and local tax laws complied with—Congress simply must provide a system of uniform rules which are both workable and equitable.

To provide a proper system, the Interstate Taxation Act establishes simple and equitable guidelines. Title I of the bill provides uniform jurisdictional standards for each of the four types of taxes which were included in our study: corporate income taxes, capital stock taxes, sales and use taxes, and gross receipts taxes. Under these standards a company would not be subject to the jurisdiction of any State in which it does not maintain a "business location," which is defined to include: the owning or leasing of real estate, the maintenance of a localized employee, or the regular maintenance of a stock of tangible personal property for sale in the ordinary course of business.

There are two significant exceptions to the basic jurisdictional standard. One exception occurs in the sales and use tax area in the form of a provision which makes an out-of-State seller liable for the collection of a tax if he regularly makes household deliveries in the State. The other exception to the basic "business location" standard occurs in the income and capital stock tax areas, and involves the exclusion from the jurisdictional rule of those corporations which have an annual net income in excess of $1 million.

Title II provides a supplement to the jurisdictional standard in the form of a limit on the percentage of income or capital which can be taxed in those cases in which a company is taxable in more than one State. Under title II, the maximum percentage of income or capital which is taxable is determined by a simple two-factor formula based on property and wages. This is also a standard which is reasonable and fair—and which will substantially reduce the severe compliance problems currently faced by small businesses.

Title III provides uniform rules in the sales and use tax area. Under this title, any possibility of an interstate sale being subjected to double taxation is entirely removed.

Title IV provides for continued congressional scrutiny of the problems left unresolved by the bill.

Title V contains definitional provisions. In addtiion, it prohibits States from imposing discriminatory taxes on interstate commerce, as well as from requiring an out-of-State taxpayer to pay for the traveling expenses and living expenses of auditors.

In considering this bill in its entirety, it is important to note that each State and subdivision retains complete freedom to impose whatever type tax it chooses. No Federal agency is given any authority whatsoever over State tax matters. The bill will create no cost whatsoever for the Federal Government.

In terms of its effect on the States, it is important also to note that in the long run this legislation will bring about an overall increase of the revenues of all of the States. This increase will be due to two factors: On the one hand, State revenues will be increased as a result of the economic growth that will be stimulated by the removal of the trade barriers currently impeding interstate commerce. On the other hand, State revenues will be increased as a result of the greater ease of enforcement and compliance which will be obtained under the uniform standards established by H.R. 7906.

In providing equitable standards for the taxation of interstate commerce, this bill will assure the survival of the many small businesses in the United States which ship goods in interstate commerce. At the same time, it will replace the present chaotic system with reasonable and practical rules—so that each taxpayer will be able to ascertain with certainty just what his liabilities are. Clearly, this type of certainty is essential if tax laws are to operate properly.

Because of the basic reforms that this proposal will bring, H.R. 7906 will make a major contribution to the Nation's economic life. I believe that the strong support for this bill which has been expressed by both industry and labor is testimony in itself to the fact that these reforms are needed. Thus I am submitting for the RECORD a representative list of some of the groups which are urging that this bill be enacted. I would like to add my voice to theirs in urging my colleagues to pass this measure once again.

Mr. Chairman, at this time I include a representative list of national associations supporting the proposed Interstate Taxation Act, H.R. 7906:

LIST OF NATIONAL ASSOCIATIONS SUPPORTING H.R. 7906

National Association of Manufacturers.
National Association of Wholesalers.
International Ladies' Garment Workers Union.
United States Chamber of Commerce.
National Council of Salesmen's Organizations.
American Association of Nurserymen.
Magazine Publishers Association.
National Small Business Association.
American Textile Manufacturers Institute.
Direct Mail Advertising Association.
Manufacturing Chemists Association.
National Food Brokers Association.
Automotive Services Industries Association.
Financial Executives Institute.
Apparel Industry Association.
Printing Industries Association.
National Frozen Food Association.
Northamerican Heating & Airconditioning Wholesalers Association.
National Candy Wholesalers Association.
Laundry & Cleaners Allied Trades Association.
National Equipment Distributors Association.
National Association of Electrical Distributors.
Wholesale Stationers' Association.
National Association of Sporting Goods Wholesalers.
Southern Industrial Distributors' Association.
Association of Institutional Distributors.
National Building Material Distributors Association.
American Movers Conference.
Movers' & Warehousemen's Association of America.
Society of American Florists.
Point-of-Purchase Advertising Institute.
Automotive Wholesaler Trade Association Executives.
Farm Equipment Wholesalers Association.
National American Wholesale Lumber Association.
Air-Conditioning & Refrigeration Wholesalers.
Screen Process Printing Association.
Food Services Equipment Industry Association.
American Advertising Federation.
National Electronic Distributors Association.
American Institute of Supply Association.
Manufacturers Agents National Association.
American Textbook Publishers Institute.
National Kitchen Distributors Association.
Laundry and Cleaners Allied Trades Association.
National Sash & Door Jobbers Association.
Shoe Service Institute.
Administrative Management Society.

Mr. McCULLOCH. Mr. Chairman, will the gentleman yield?

Mr. RODINO. I yield to the gentleman from Ohio.

Mr. McCULLOCH. Mr. Chairman, I would ask the chairman of the subcommittee one question for the information of the House:

Would the gentleman from New Jersey advise the Committee who the ranking minority member of this special and able subcommittee was over the last 6 or 7 years, and until January 3, 1969?

Mr. RODINO. The former ranking member is now the Governor of the great State of West Virginia, and our former colleague, then Congressman Arch Moore, who was a very ardent supporter of this bill.

Mr. McCULLOCH. Mr. Chairman, one further question:

Will the gentleman from New Jersey advise the Committee the names of the chairmen of the House and Senate committees who yielded jurisdiction for the study of this important legislation by the Committee on the Judiciary of the House?

Mr. RODINO. On the Senate side it was the distinguished Senator from Virginia, Senator Harry Byrd, Sr., and on the House side, the distinguished chairman of the House Committee on Ways and Means, the gentleman from Arkansas (Mr. MILLS).

As a matter of fact, I might say for the enlightment of the House that it was at the insistence of Senator Harry Byrd, Sr., that this study was then undertaken and initiated by Congressman Willis.

Mr. McCULLOCH. I thank the gentleman.

Mr. COLLIER. Mr. Chairman, will the gentleman yield?

Mr. RODINO. I yield to the gentleman.

Mr. COLLIER. I have just one clarifying question, if I may.

I listened carefully to the gentleman's explanation and it poses one question in my mind. Perhaps you could throw some light on it and inform me because I have had an inquiry along these lines very recently.

In the event that a man is a manufacturer's representative and handles possibly eight or 10 or 12 different lines and rents a sales office which he operates, in behalf of those firms that he is representing, would he in that case be leasing?

Mr. RODINO. That is correct.

Mr. COLLIER. What would his status be, however, in light of the fact that he, as most manufacturer's representatives, is operating as an independent contractor? He does not handle the contract or the goods, but merely in sum and substance is an order taker and the product on the order that he has taken is shipped directly from a company out of the State to his customer.

Mr. RODINO. He would be liable since he is leasing or renting property which brings him within the jurisdiction or the standards or the jurisdictional formula that we set up.

Mr. COLLIER. Would there in that instance really be a principal-agency relationship inasmuch as he would be operating on a sort of multiple order taking basis as an independent contractor? In that instance, if your response is correct, would each of those manufacturers that he represents be liable to the extent of the volume of business that he did for each?

Mr. RODINO. Now I understand the gentleman's question a little more clearly.

If he is an independent contractor who is leasing, then he is liable. The company is not liable because it does not come within the requirements of the formula we have set up.

Mr. COLLIER. If it receives the order and it receives the payment from the individual customer, and generally he is drawing on a commission basis—he would be liable. But the company that received the payment directly from the customer and did in fact ship the goods, would not be liable, is that correct?

Mr. RODINO. That is correct unless the company had a business location in that area.

Mr. COLLIER. I thank the gentleman.

Mr. TAFT. Mr. Chairman, will the gentleman yield?

Mr. RODINO. I yield to the gentleman.

Mr. TAFT. I believe the gentleman said a few moments ago that the bill does not affect in any way the choice or type of tax of a State or local government that might be involved.

I wonder just looking at the first few lines of the bill which states:

> No State or political subdivision thereof shall have power—
>
> (1) to impose a net income tax or capital stock tax on a corporation other than an excluded corporation unless the corporation has a business location in the State during the taxable year;
>
> (2) to require a person to collect a sales or use tax with respect to a sale of tangible personal property unless the person has a business location in the State or regularly makes household deliveries in the State; or
>
> (3) to impose a gross receipts tax with respect to a sale of tangible personal property unless the seller has a business location in the State.

In other words, as I understand, all of these things can be done today. State taxes can be and are imposed in those areas or there would not be a need for the bill.

Is it not necessarily true, then, that this bill does amount to a limitation on the types of taxes or the choice of tax an individual State might make?

Mr. RODINO. The limitation is a jurisdictional limitation but not as to the type of the tax that may be imposed.

Mr. TAFT. It restricts the type of sales tax or gross receipts tax and type of income tax; is that not correct?

Mr. RODINO. If you want to put it that way, yes. I would state that the main thrust is to set up these jurisdictional standards without in any way actually limiting the imposition of taxes.

Mr. TAFT. If the gentleman will yield further, I have one or two additional questions on which he might be able to be of some assistance. Why was the exclusion level of $1 million inserted? In other words, as I understand, corporations with an average net income in excess of $1 million would not be helped in any way by this bill. As I understand, we would set up really two classes of taxpayers, one of which might be paying a tax under certain circumstances, where a competitor that might be somewhat smaller might not be paying the same tax, although they may be in the same business and in the same State. In my opinion, this might very well violate the rule of the uniformity in the constitutions of some of the States.

Did the committee consider that question? What comment would the gentleman make in relation to that?

Mr. RODINO. Yes, the committee did consider that question. The problem that developed as a result of the chaos and confusion that confronted the smaller companies in those areas was great. The larger companies were not confronted with the same problem. The exhaustive study conducted by the subcommittee reveals that there are, in fact, a number of serious problems which presently confront the larger corporations. However, because tax problems of the large corporations, I would say, invariably do involve complex questions of international tax policy as well as questions of State and local tax policy, the subcommittee recommended that those measures be postponed pending a further evaluation of the steps taken by the States in this area.

As a result, we have title IV in the bill, which gives this committee continued oversight once the measure is enacted, so that if problems develop in this area, they will also be dealt with.

Mr. MacGREGOR. Mr. Chairman, will the distinguished gentleman from New Jersey yield to me so that I may make a further reply to the question of the gentleman from Ohio?

Mr. RODINO. I yield to the gentleman from Minnesota.

Mr. MacGREGOR. In further response to the inquiry of the gentleman from Ohio, I think it should be candidly said that the legislative work product of the special subcommittee in this area sounds in pragmatism if not in logic. During the tortuous course of the development of this legislation, it is no secret that tax administrators in several States, and to a lesser extent the Governors thereof, voiced loud complaints to the subcommittee about the losses in revenue that would accrue if we were not to incorporate a $1 million limitation on the applicability of the provisions of this statute. The subcommittee in its wisdom, wishing to be responsive if possible to this plea from the tax collectors across the face of the land, consulted by way of hearings with representatives of both small and large businesses. It did appear to us as though the incorporation of a $1 million net sales limitation, which was suggested to the subcommittee by one of the most knowledgeable of the State tax administrators—such suggestion seeming to meet with the approval of small and big business—was a prudent step for us to take in seeking to develop legislation which would attract the strongest possible support across the broadest range of opinion and interest.

I am pleased that the chairman of the subcommittee, the gentleman from New Jersey (Mr. RODINO), called attention to title IV of the bill. Title IV of the bill imposes on the Committee on the Judiciary of the House of Representatives a continuing responsibility during the course of the first 4 years following passage of the bill, should that come about, to evaluate the operation of the bill and, specifically, to consider the ramifications of the million-dollar test.

Mr. TAFT. I thank the gentleman.

Mr. ICHORD. Mr. Chairman, will the gentleman from New Jersey yield?

Mr. RODINO. I yield to the gentleman from Missouri.

Mr. ICHORD. Mr. Chairman, I compliment the gentleman from New Jersey first of all for the very competent manner in which he has handled a very complicated subject, but, as the gentleman well knows, I have considerable reservation about this legislation primarily be-

cause of the supposed effect upon the State of Missouri. I would like to inquire of the gentleman as to who prepared the summary on pages 11 and 12 of the report as to the effect of H.R. 7906 on the various States of the Union?

Mr. RODINO. Mr. Chairman, the staff of the subcommittee went into an exhaustive study in the preparation of these estimates.

Mr. ICHORD. Mr. Chairman, I just concluded a conversation with the Governor of the State of Missouri, and he stated that his experts in State government are still estimating that this bill will result in Missouri losing between $25 and $50 million of sales and use tax revenues. I notice in the summary that the staff indicates the loss in Missouri will not exceed 0.09 percent.

Missouri's take from the sales and use tax is approximately $350 million. This is only one-tenth of 1 percent of what the staff represents. One percent would only be $3 million. Here the State is estimating $25 to $50 million.

I cannot see how the State could possibly be that far off. I would question the study of the staff before I would question the conclusions of the State of Missouri.

Mr. RODINO. I would say to the gentleman that I am not surprised since we have heard from several of the tax administrators and those people who have jurisdiction over the tax revenues of the State, and the same complaint has been made. Invariably their figures are much higher and I might say in my judgment exaggerated.

Mr. ICHORD. Of course, it is very difficult for the staff. I did not mean to be disparaging to the staff of the committee, but it is very difficult for them to make a study of the varying tax laws of the different States.

Mr. RODINO. I would say to the gentleman from Missouri that the staff did not do this in just 1 day or 1 month or 1 year. It took all of 6 years to compile these estimates.

The CHAIRMAN. The Chair recognizes the gentleman from Minnesota (Mr. MACGREGOR).

Mr. MACGREGOR. Mr. Chairman, I yield myself 10 minutes.

Mr. Chairman, I rise in support of H.R. 7906. Along with many other members of the Committee on the Judiciary, I am a coauthor of an identical measure, H.R. 4178.

Mr. Chairman, I should like to correct some printing errors in the report which accompanies the bill presently under consideration. H.R. 7906.

On page 1 of the report, under the paragraph entitled "Purpose of the legislation," on line 5 of the first paragraph, the date "1978" appears. Those of us serving on the Committee on the Judiciary like to think we are looking ahead, but we did not really look ahead 9 years. That vote refers to a vote taken in the House last year and the date, of course, should be "1968."

On page 11 of the committee report, under the subheading "Arkansas," in discussing the effects of the adoption of H.R. 7906 on State revenues, the words appear under Arkansas, "Corporate income tax: 0.06 percent." To those words should be added the word "loss" so that the report would read for Arkansas: "Corporate income tax: 0.06 percent loss."

On page 14 of the committee report, under the State of Washington, under "Sales and use tax" there is an error in the amount, which should read "0.1 percent" instead of "1.01 percent."

Mr. Chairman, during the course of the debate on the rule the distinguished Member of the House Committee on the Judiciary, the gentleman from Missouri (Mr. HUNGATE) suggested that before members of this committee or of the House voted on this bill they should consult with their tax administrators in their respective States and with their Governors. I believe that is an excellent suggestion. While they are on the telephone I might suggest they ask the operator to put them in touch with a representative group of small businessmen in their respective States. They would get quite a different answer if they were to consult with the small businessmen, who increasingly, with a relatively small plant and a limited number of employees, operate frequently by mail order in a number of States. In short, Mr. Chairman, this is a small-businessman-taxpayers' benefit bill instead of a tax collector's dream.

Mr. ADAMS. Mr. Chairman, will the gentleman yield ?

Mr. MACGREGOR. I yield to the gentleman from Washington.

Mr. ADAMS. The problem that we have is we deal with the small intrastate businesses who are in competition. If we ask them, particularly in a State which has a sales and use tax and is dealing with border States shipping in small commercial items, we find our small State businesses have a great deal of difficulty. They are paying the State tax, and the interstate operation is not, and they may be within 15 or 20 miles, of the border and easily reached by truck delivery.

Mr. MACGREGOR. I hope the gentleman will listen to all the debate and carefully read the RECORD after he has cast his affirmative vote, because he will find that this bill which overturns the Miller Brothers helps the company in one State with reference to unfair competition from a competitor across the State line instead of hurting the company within the State as the gentleman suggested.

Mr. Chairman, the present system of State taxation of interstate commerce does not work. The flaws cannot be remedied by State action alone. At the present time, we are confronted with a situation in which the tax administrators of each State and local subdivision will assert that they have the power to reach across their own borders for the purpose of regulating companies which make their sales across State lines. In effect, each jurisdiction is attempting to impose its own nationwide tax system.

It is an uncontroverted fact that nonenforcement of the present jurisdictional limits of the State and local governments is the rule and not the exception. Conversely, noncompliance on the part of the local taxpayers is also the rule and not the exception. The State and their subdivisions do not have the administrative agencies necessary to enforce their present rules in an evenhanded way. Likewise, small businesses do not have the clerks, typists, accountants and tax lawyers necessary to comply with these rules.

These facts were clearly documented in the four-volume study made by the Special Subcommittee on Interstate Taxation. Based on the experience of thousands of companies, the subcommittee learned that noncompliance was the rule in 97 percent of the income tax cases and 93 percent of the sales and use tax cases where the businesses were located outside the taxing state.

The fact of widespread nonenforcement and noncompliance—uncontroverted in the hearings before the Special Subcommittee on Interstate Taxation—is a clear indication that practical and workable standards must be created. If we do not act to create them in the Congress, I assure you they will be created piecemeal by the courts. I would suggest to the members of this committee that it is far preferable to establish standards through the medium of action by the elective Representatives of the American people rather than by the case-by-case, hodgepodge method of decisions in the Federal judiciary.

Obviously, the chaos and confusion which characterizes the whole area of State taxation of interstate commerce stems primarily from the absence of meaningful jurisdictional standards. As each individual tax collector reaches further there and further beyond his own State borders, more and more taxpayers are exposed to compliance problems that stagger the imagination. As a result, any legislative solution must address itself to the basic question of the circumstances in which a company located in one State can be called on to pay taxes to or within another State. Unless we face this basic jurisdictional issue, we in the Congress will evade our responsibility to all of the States, and to the entire small business community of America.

In analyzing the details of H.R. 7906, I would suggest that each Member of Congress consider the insurmountable problems which are now facing small companies in his or her own State. A typical small company has less than 50 employees—in fact, a great many of them have less than 10 employees. Notwithstanding its size, such a small company in your State often sells its products in many other States—States in which it owns no property, and has no local employees. As a result, many such companies are exposed to liabilities in all or most all of 50 States, as well as in thousands of local jurisdictions. It is preposterous to assume that such a company can comply with the differing tax requirements of all of these jurisdictions. By laying down simple and practical jurisdictional standards, title I of H.R. 7906 will give the small companies the type of protection that is obviously needed.

Title I provides that the small company in your State cannot be taxable by another State unless it maintains what

is referred to as a "business location" in the other State. Now the term "business location" is a word of art which is used throughout the entire bill, and defined in section 511 to include: First, the owning or leasing of real estate; second, the maintenance of a stock of goods for sale in the regular course of business; or third, the presence of a local employee whose activities consist of more than the mere solicitation of orders.

I recognize that some of the tax administrators oppose these jurisdictional standards, and have created the impression that the only effect of title I is to impose limitations on present State taxing powers over interstate commerce. Let me point out to you that this is not the case, for there is a basic exception to title I which actually extends the jurisdictional reach of the States beyond the limits already established by the U.S. Supreme Court.

If I may respectfully have the attention of the gentleman from Washington (Mr. ADAMS), I will now directly respond to the point which he raised.

This exception appears in section 101 (2) which allows the States to impose sales tax collection requirements on all out-of-State sellers who regularly make deliveries to households in the State. This provision reverses the Supreme Court's decision in Miller Brothers against Maryland. The reversal of the rule in this case has long been advocated by the tax administrators themselves, and has also been recommended by the Advisory Commission on Intergovernmental Relations. It is regarded by the Judiciary Committee as an important means of strengthening State taxing powers in an area where local retailers clearly need protection from out-of-State competitors.

When all of the jurisdictional standards in title I are considered in their entirety, and in the light of the 6-year study conducted by our subcommittee, it becomes clear that under these standards the States generally will be able to continue to impose their business taxes on most of the companies which are currently complying with State laws, and will, in the sales tax area, be able to reach an even larger number of companies than they now reach. At the same time, the typical small company located in your State will be relieved of the responsibility of having to comply with a completely unworkable system of multi-State, multicounty, and multicity taxation.

That the subcommittee has molded legislation which will achieve fair and workable jurisdictional standards without causing the States to suffer revenue losses is made clear by the subcommittee's State-by-State analysis which appears on pages 11 through 15 of House Report 91–279, which accompanies this legislation.

Although title I provides the basic relief which is essential for all of the small companies, further measures designed to reduce compliance problems also appear in title II and title III.

Under title II, if a small company in your State is taxable on its income or capital in another State it may determine its liability under an extremely simple and practical formula. Under that formula no State will be able to tax a greater percentage of income or capital than the percentage arrived at by computing the proportion of tangible assets in the State and wages paid to employees in the State. This simple formula has several features which will not only reduce the compliance problems of small companies, but will also greatly increase the administrative efficiency of the State tax collectors.

First of all, since the formula does not contain a sales factor, it will not be necessary for a small company to keep detailed records of each interstate shipment. Second, since all of the company's income is subjected to the same simple formula, no disputes can arise with respect to the allocation of a wide variety of specialized items such as dividends, capital gains, rents, patent royalties, interest on bonds, and so forth.

These features of the formula in title II will so simplify the administration of corporate income tax laws that all of the States which impose income taxes will benefit.

Title III of H.R. 7906 will likewise increase the efficiency of compliance and enforcement in the sales and use tax area. For example, section 301(a) of title III applies a uniform rule for locating sales—a practical rule which conforms to the present practice of most of the States. Section 301(b) also provides a uniform standard for the imposition of use taxes so that such a tax cannot be imposed on a company that does not have a business location in the State, nor on an individual who does not have a dwelling place in the taxing State.

Section 301(c) of title III provides for a system of reciprocal credits so that each State will be required to give a credit for prior sales or use taxes imposed by other States. This system of reciprocal credits is one with which all of the State tax administrators are in agreement. However, there are, in fact, still some States which do not grant such credits. As a result, section 301(c) will complete the task of providing a nationwide uniform system of reciprocity.

Section 305 of title III is of particular significance. It provides a standard for the taxation of interstate sales by local governments. Because of the widespread proliferation of local sales and use taxes this provision will protect small companies all over the United States from being completely overwhelmed by the jurisdictional assertions of more than 3,000 political subdivisions, each of which is currently taxing interstate commerce according to its own individual rules. Clearly, the compliance problems under this intolerable situation are enormous. Section 305 in itself will spare thousands of small companies the price of countless weeks and months of labor in filling out tax forms which is often more costly than the actual tax dollars involved.

Now the three titles which I have reviewed contain the major substantive provisions of H.R. 7906. Each provision is based on a sound and logical principle, and has been formulated so as to both reduce the compliance problems of the small companies and to increase the efficiency of States tax administration. At the same time there is no single provision which is designed to protect any special interest, or to prejudice the interest of any State.

Mr. CONABLE. Mr. Chairman, will the gentleman yield?

Mr. MacGREGOR. Mr. Chairman, I yield to the gentleman from New York, (Mr. CONABLE).

Mr. CONABLE. Mr. Chairman, I thank the distinguished gentleman from Minnesota for yielding for several questions. Before propounding those questions, let me say that I support the goal of this legislation, and I propose to vote for it on its final passage.

However, in a study of this legislation several questions have arisen. In checking with my own New York State Tax Commission I found that they would like to have these matters discussed on the floor as part of the legislative history.

First, Mr. Chairman, I wonder if the gentleman from Minnesota could discuss a little further the impact of title II with respect to the factors that are to be considered in determining the maximum percentage of income or capital to be taxed. Apparently this is to be based on the property and payroll proportionate formula, and does not allow any receipts factors such as is currently involved in most allocation formulas used by the States.

It seems to me, Mr. Chairman, that this might result in some degree of discrimination against the industrial States which have, of course, located in them the property and the payrolls that are to be the basis of the maximum percentage of income to be taxed.

Mr. MACGREGOR. Mr. Chairman, the gentleman from New York has raised a significant point. It was one of the principal problems or hurdles faced by the special subcommittee in the consideration of this legislation. This partcular hurdle was known as the three-factor formula versus the two-factor formula. In fact, early drafts of the bill did include as an additional factor the factor which the gentleman has indicated, and we did for some time favor in the subcommittee a somewhat more comprehensive formula based on the three factors instead of the ultimate two-factor formula, which we now have. Again, in the course of the legislative development of this bill, and with due consideration to the interests of the industrial States, and with the argument which the gentleman from New York has so well propounded, it was the determination——

The CHAIRMAN. The time of the gentleman has again expired.

Mr. MACGREGOR. Mr. Chairman, I yield myself 3 additional minutes.

It was the determination of the subcommittee that it was wiser and more equitable to all of the States to adopt the two-factor formula which is contained in the bill, for it would promote efficient enforcement by the States and compliance by the taxpayer.

Mr. CONABLE. Mr. Chairman, the second question is this:

I wonder if any discussion was had in the committee on section 305, which re-

stricts the classification of interstate sales according to geographic areas in the State?

Now as I understand it, the section does not affect locally imposed sales and use taxes which are State administered and uniformly applied.

However, in our State we have a municipal tax administered by the municipality to a substantial extent.

It seems to me, looking at the committee report on page 13 where it states that New York State would suffer no significant loss of sales and use taxes, that this statement must relate to the State itself and not to the municipalities which I think would doubtless suffer substantially sales tax losses as a result of this provision, section 305.

Mr. MACGREGOR. May I respond to the gentleman from New York who was kind enough to raise this point with me before the formal debate began.

I cannot improve by interpretation the clear language expressed in lines 24 and 25 on page 10 of the bill and the top four lines on page 11 of the bill which read as follows:

> No seller shall be required by a State or political subdivision thereof to classify interstate sales for sales tax accounting purposes according to geographic areas of the State in any manner other than to account for interstate sales with destinations in political subdivisions in which the seller has a business location or regularly makes household deliveries.

With respect to the second point the gentleman made, I think it is a fair criticism, if you will, to indicate page 11 through 15 of the committee report where we have endeavored to indicate the only loss of revenue which our exhaustive studies show will be suffered by the States. It was impossible for us to determine, notwithstanding the exhaustive 4-year study that was made and the voluminous materials gathered, and evaluate with accuracy to determine the loss of revenue to the individual subdivisions because they are approximately 3,000 in number at the present time.

Mr. CONABLE. Does not the gentleman agree with me then that if a State does have a number of municipally administered taxes, it may have a substantial impact on municipal revenues in the State?

Mr. MACGREGOR. I could not so agree because I have no factual data on which to base such a conclusion.

Mr. CONABLE. I have some reservations about the double standard implicit in this million dollar differentiation that is made. I do not believe, in the answer that the gentleman gave earlier to a question from the gentleman from Ohio (Mr. TAFT), that he specified this million dollar standard applies only to income and to capital stock tax provisions; is that not correct?

This million dollar standard, this double standard, does not apply to the sales tax; is that correct?

Mr. MACGREGOR. That is correct.

Mr. CONABLE. I thank the gentleman very much for that further elucidation.

Mr. RODINO. Mr. Chairman, I yield to the gentleman from Ohio (Mr. FEIGHAN) such time as he may consume.

Mr. FEIGHAN. Mr. Chairman, I wish to commend the very distinguished and able chairman of the subcommittee, the gentleman from New Jersey (Mr. RODINO) as well as those members of the subcommittee, both past and present, who have worked so arduously in producing such a good bill.

I also want to commend the gentleman from New Jersey (Mr. RODINO) for his very clear and concise presentation.

I would like to mention two very outstanding former tax administrators of the State of Ohio under two administrations of different parties, both of whom came to Washington to testify on behalf of this legislation.

One is Mr. Bill Evitt the tax administrator under former Gov. John Bricker who subsequently was a Senator and also Mr. Emory C. Glander tax administrator under Gov. Frank J. Lausche who also subsequently became a U.S. Senator.

Mr. Chairman, the European Common Market was formed to facilitate and promote trade among its member nations. Every member of the Common Market is able to trade freely with every other member.

The United States is also a member of a common market—the "American common market." By that, I mean that each State in our Nation has free access to markets in every other State. Our common market, in fact, is much older than the European version. Indeed, this principle of free trade among the States is the backbone of our great American economy.

Yet our "American common market" is in danger. For several years now American business has been working under an ever-increasing handicap: our many State and local tax laws. With the growing volume of interstate business in today's age of rapid and efficient transportation, the tendency of local and State governments has been to reach out for increased revenues from out-of-State businesses, resulting in a serious burden being placed on the shoulders of participants in interstate commerce.

H.R. 7906, the Interstate Taxation Act, will help to alleviate that burden. This bill, which is identical to one which I cosponsored, will limit the taxing power of a State over the smaller out-of-State firms doing business within that State's boundaries. Basically, a firm would have to meet a certain standard before the State could levy corporate income taxes, sales or use taxes, capital stock taxes, or gross receipts taxes on that firm. This "business location standard" is based on the firm's property, employment, and inventory located within the State in question.

H.R. 7906 will also first, provide a uniform method for establishing the maximum percentage of income which can be taxed by any one State; second, reduce multiple sales taxes and facilitate the collection responsibilities of the interstate seller; and third, provide for continued study of the subject of State taxation of interstate commerce by the House Judiciary Committee and the Senate Finance Committee.

This bill is identical to an earlier one, H.R. 2158, which was passed last year by the House by a vote of 284 to 89. Unfortunately the bill was adopted too late in the session for the Senate to give this important measure its full consideration.

Mr. Chairman, I hope that the bill now before us, H.R. 7906, will receive the wholehearted support of the House.

Mr. RODINO. Mr. Chairman, I yield 5 minutes to the gentleman from Missouri (Mr. HUNGATE).

Mr. ADAMS. Mr. Chairman, will the gentleman yield?

Mr. HUNGATE. I yield to the gentleman from Washington.

Mr. ADAMS. I ask the Chairman of the Committee if I might yield the 5 minutes that I have to the gentleman from Missouri, and participate in this debate at the same time.

Mr. RODINO. Before I yield 5 minutes, may I inquire of the Chair how much time the gentleman from New Jersey has consumed?

The CHAIRMAN. Forty-three minutes have been consumed, with 17 minutes remaining after the gentleman from Missouri has finished.

Mr. RODINO. I yield 2 minutes to the gentleman from Washington.

Mr. ADAMS. Mr. Chairman, will the gentleman yield?

Mr. HUNGATE. I yield to the gentleman from Washington not to exceed 2 minutes.

The CHAIRMAN. The gentleman from New Jersey has already yielded to the gentleman from Missouri 5 minutes. You may yield additional time later.

Mr. ADAMS. Mr. Chairman, I rise in opposition to this bill. I wish to indicate that the Members of the Washington delegation will oppose the bill. We have carefully tried to examine the statement on page 14 of the report as to the revenue losses to the State. We find that an examination of the information with which we were supplied only 12 firms doing business in the State of Washington replied to the questionnaires of the staff, whereas the State revenue people have examined 6,000 of the out-of-State registered taxpayers, and their estimates indicate there would be a biennial loss—the State operates on a 2-year basis—of $72 million in tax revenues to the State of Washington during this period.

I also want to indicate by sections how this loss will occur. Basically, it generally occurs in two situations, one being from the change in collections from out-of-State taxpayers when ordered by the State when they sell into our State from those States that do not have sales and use taxes. The other basically is in the jurisdiction to tax where the mail-order firms and those who are using consigned goods and have the ability to operate in our State without paying a sales and use tax. These are two basic areas of tax avoidance.

The advocates of the proposed Interstate Tax Act, H.R. 7906, continue to understate the potential loss of revenue to the various State and local governments in the Nation from enactment of the proposed bill. For example, recent figures released by the Subcommittee on State Taxation of Interstate Commerce suggest that the loss in sales and use tax revenue to the state of Washington would be a maximum of 1.01 percent

of the present yield and that there would be no significant loss in the state's business and occupation—gross receipts—tax revenues. These estimates apparently came from a staff report made several years ago by the Subcommittee on State Taxation and were based upon nationally compiled business statistics and not from data from the State's tax files and tax statistics. The Washington State Department of Revenue has pointed out errors in these figures on previous occasions, but this has not been acknowledged or considered by the subcommittee. Based upon the Washington State Department of Revenue's latest estimate of the impact of H.R. 7906 upon the State's revenue for the biennium beginning July 1, 1969, the total potential revenue loss to the State would be $72 million. The total potential loss in sales and use tax revenues is equal to approximately 5 percent of the estimated yield from those sources for the 1969–71 biennium and the total potential business and occupation tax loss is approximately $20 million. The total potential loss is more money than was appropriated by the Washington Legislature from the general fund for the combined operations for all of the executive departments of State government, the legislative operations, and the judicial branch for the 1969–71 biennium.

II. SUMMARY OF REVENUE LOSS BY SECTIONS

H.R. 7906 has been passed by the U.S. House of Representatives and is now pending before the U.S. Senate. The estimates herein of the impact of revenue loss to be suffered by the State of Washington under the provisions of H.R. 7906 replace previous estimates of April 17, 1967. In addition to the estimates, which have been revised to the 1969–71 fiscal biennium, a brief discussion as an appendix has been attached which discusses the relationship of these estimates to the estimates of Washington's revenue losses under the bill as they were presented to the House for consideration.

H.R. 7906 replaces H.R. 16491 as introduced in the Congress in the fall of 1966 and, as amended, contains only one change from H.R. 16491 which would have any impact upon revenues of this State. The change is in the form of an addition to section 511 providing the general rule on "business location." It adds a third provision to the rule and the rule may now be summarized as follows: "Business location" is considered as first, owning or leasing of real property; second, having one or more employees "located" in the State under section 513; or third, maintaining stocks of goods for sale in the ordinary course of business.

The added provision broadens the rule to the advantage of the States. It is qualified, however, to the extent that property on consignment and in the hands of and offered for sale by a consignee may not be considered as stock maintained by the consignor. This qualification would limit the application of the stock of goods provision of the "business location" rule to goods held in a warehouse in this State by an out-of-State vendor and would to an extent limit any revenue change which would result from the inclusion of the third item above in the section.

Detail of the amounts and reasons for the losses are contained herein. They are summarized as follows:

[In millions]

Immediate loss	$34.6
Potential loss	35.9
Total potential loss	[1] 70.5

[1] Revised impact on an aggregate basis as of May 1969, $72.0 million.

III. DETAILS OF REVENUE IMPACT ESTIMATES BY SECTION

TITLE I—JURISDICTION OF TAX

Section 101(2): This section provides that no State shall have the power to require a seller to collect sales or use tax with respect to sales of tangible personal property unless the seller has a business location in the State or regularly makes household deliveries in the State. Based on anticipated levels of payments a net biennial loss of $15.8 million can be expected in connection with out-of-State vendors which do not meet the proposed technical requirements for a "business location" in this State, but which are presently collecting sales and use tax with respect to sales to Washington residents by reason of substantial local sales activity—solicitation and order-taking by salesmen and employees or independent agents or the maintaining of stocks of goods in the hands of a consignee which are offered for sale on the account of the consignee. This net loss is based upon a gross loss reduced by an estimated amount which would be recovered through voluntary reporting and/or a substantial increase in audit activity as to Washington consumers and, in addition, by the fact that it would be possible to require sales tax collection by certain out-of-State firms which regularly make household deliveries into the State.

Additional potential losses of $25.5 million per biennium are projected as the result of changes in modes of business operations permitting tax avoidance by the elimination of business locations in the State. See additional comments under section 511 and 513 below.

Section 101(3): This would prevent the State from imposing the business and occupation tax with respect to the sale of tangible personal property unless the seller has a business location in the State. It would result in a loss of business and occupation tax revenue from out-of-State manufacturers and other businesses in regard to their wholesaling and retailing activities in this State.

With respect to foreign taxpayers which are reporting business and occupation tax under present Washington statutes which would be exempt with enactment of the interstate taxation act, because of the business location limitations provided in the act, it is estimated that a biennial tax loss of $5.6 million would occur. This would be primarily represented by firms making wholesale sales in the State. As in the instance cited above, changes in methods of operation would undoubtedly occur causing increased revenue losses of $10.4 million per biennium. See section 511 and 513 for comments regarding the "business location" and "location of employee."

TITLE III—SALES AND USE TAXES

Section 301(b): This would restrict the imposition of use tax with respect to the use of tangible personal property of persons without a business location in the State or a resident individual. We estimate a biennial loss here of $3.9 million. Under the terms of this provision Washington would lack authority to tax nonresident firms in connection with tax on advertising materials, executive cars, and other business property used in the State.

Section 303 provides for the deduction of "freight charges or other charges for transporting tangible personal property to the purchaser" if such charges are separately stated by the seller. Present law allows the deduction of actual freight or delivery charges which are billed separately to the buyer and which are paid as an advance for the buyer from the place where title passes. Thus, this section would expand the deduction to include any freight or transportation charge which is designated as such on the invoice. There is no requirement that the charges represent actual freight costs. Hence, the freight deduction is completely subject to manipulation by the seller. We predict a minimum revenue loss of $2.2 million under this section.

Section 304 provides sales and use tax immunity to business buyers making out-of-State purchases, simply by furnishing the seller with the purchaser's registration number without any provision for a stipulation that the purchase is for resale or is an exempt sale. The present law and procedures require the seller to prove that such sales are in fact immune from these taxes. Part (2) of the section permits a purchaser not registered with the department of revenue for the payment of taxes to make exempt purchases merely by presenting the seller with a certificate stating a reason for exemption. Without the proviso for the issuance of immunity numbers, as contained in the previous bill (H.R. 11798), the department of revenue will have no way of controlling or auditing such purchases for use tax purposes. This provision would cause a biennial loss in tax revenue of $1.9 million. It is important to note that this estimate is based upon the presumption the department of revenue would be in a position to recover a portion of the unpaid tax through initiating a greatly expanded audit program and conducting regular audits of accounts not presently given audit coverage but which, as holders of registration numbers, would have to be checked in order to determine whether or not their immune purchases were valid and to ascertain that use tax had been reported on taxable items. Without this expanded audit program the revenue loss would be much greater than the figure stated.

TITLE V

Section 504: The definition of use tax, as provided in this section, is so broad that it would include a use tax that is complementary to a general sales tax and a use tax complementary to some types of special sales taxes including, for example, cigarette and gasoline taxes. Under section 301(b) a State could not impose its use taxes with respect to such items shipped from an out-of-State location to an out-of-State individual who picked them up at a post office or

a terminal of a common carrier in this State. This could lend legality to substantial bootlegging operations in items such as cigarettes. An estimate of the revenue losses which might be expected in this context is difficult to determine. Past experience has shown that legal loopholes are quickly utilized and there is every indication that biennial revenue losses in regard to cigarette taxes would total at least $2.1 million per biennium.

Section 511(a): This section defines "business location" as the term is used in section 101 (2) and (3). It restricts the term to a person first, owning or leasing real property in the State; second, having one or more employees in the State; or third, maintaining stocks of goods in the State for sale in the ordinary course of business.

Condition (2) regarding "location of employees" is discussed further under section 513. The definition would remove firms from tax liability that have only a stock of goods in this State held in the hands of a consignee and offered for sale on the account of the consignee. Stocks of goods held by consignees under such conditions now constitute "doing business" on the part of the out-of-State vendor and make such vendors liable for gross receipts taxes. Such vendors are now also liable for the collection of sales and use taxes whenever retail sales are made by the vendor to purchasers in this State, whether the goods are shipped from points in or outside this State. Estimated revenue losses that would accrue under this definition are included under Section 101 (2) and (3).

Section 513 (a) (b) (c) (d): The "location of employee" in the State is defined in this section. Under its provisions an employee's activity creates tax liability for his employer when his services are performed entirely in this State or when his services outside the State are only incidental to his instate activities. When his services are both in and out of the State and the employer maintains a place of business from which the employee regularly leaves and returns, the employee's instate sales activities create tax liability. Such place is known as the employee's "base of operations." Where the employer does not maintain a place of business in the State, the solicitation of orders by the employee does not create tax liability if the orders are sent outside the State for approval or rejection and are filled by shipment or delivery from a point outside the State.

Washington law, under authority of U.S. Supreme Court decisions, presently makes retail sales solicited by a resident salesman or sales agent, under such conditions of approval and delivery, as described above, subject to sales or use taxes but not to gross receipts taxes. In cases where the employer has only a stock of goods, or goods held on consignment in this State, orders filled from such stocks become subject to the gross receipts tax as well as sales and use taxes. The proposed bill would remove sales from goods held in the hands of a consignee and offered for sale on the account of the consignee from tax liability. The estimate of the revenue loss that would occur under these conditions is included under section 101(2)(3).

Section 513(e): This section holds that an employee installing or repairing tangible property resulting from an interstate sale cannot be considered located in the State if such services are incidental to the sale. At present such installation or repair services, whether performed by the vendor's employees, or by a subcontractor, make the entire sale subject to sales, use, and gross receipts taxes. This liability occurs regardless of any other conditions of liability surrounding the sale. The proposed bill will exempt the gross amount of many sales of considerable size, such as the installation of a generator in a power dam on the Columbia River. An estimated biennial revenue loss of $3.1 million can be expected under this section.

SUMMARY OF BIENNIAL REVENUE LOSS TO THE STATE OF WASHINGTON DURING THE 1969-71 BIENNIUM WITH THE ADOPTION, BY CONGRESS, OF H.R. 7906

[In millions]

Title and section	Immediate impact with passage of H.R. 7906 (biennial loss)	Additional potential loss with changes in business modes of operation
I. 101(2)	−$15.8	−$25.5
I. 101(3)	−5.6	−10.4
III. 301(b)	−3.9	
III. 303	−2.2	
III. 304	−1.9	
V. 504	−2.1	
V. 513(e)	−3.1	
Immediate loss	34.6	
Potential loss		35.9
Immediate loss		34.6
Total potential loss [1]		70.5

[1] Revised impact on an aggregate basis as of May 1969, $72.000.000.

SUMMARY OF BIENNIAL REVENUE LOSS TO THE STATE OF WASHINGTON DURING THE 1969-71 BIENNIUM, BY TYPE OF TAX, WITH THE ADOPTION, BY CONGRESS, OF H.R. 7906

[In millions]

Type of tax	Immediate impact with passage of H.R. 7906 (biennial Loss)	Additional potential loss with changes in business modes of operation
Sales	−$23.9	−$25.5
Business and occupation	−8.6	−10.4
Cigarette taxes	−2.1	
Immediate loss	34.6	
Potential loss		35.9
Immediate loss		34.6
Total potential loss		[1] 70.5

[1] Revised impact on an aggregate basis as of May 1969, $72,-000,000.

Mr. HUNGATE. I thank the gentleman for his contribution.

Mr. Chairman, it has somewhere been said that one with God is a majority. This was not true in the last Congress on this bill, but I am going to give that saying another chance.

We are considering this bill regarding State taxation of interstate commerce at a time when all States and local political subdivisions are desperate for funds and additional methods of raising revenue. This bill proposes to exempt any corporation from State income taxes, capital stock taxes, use taxes, and gross receipt taxes in many specific and technically defined areas. Although the language is possibly inevitably legalistic, a reasonable construction would appear to be that the only foreign corporations on which a State could levy these taxes after this act became effective would be those which would meet one or more of the following tests:

A business location in the State, regular household deliveries in the State, or corporations with an annual income exceeding $1 million. Those corporations averaging $1 million are called excluded corporations.

I propose to offer an amendment to change the definition of excluded corporation from one averaging $1 million income per year to one averaging $500,000 annual income per year. This would seem to me to come closer to our definition of small businesses, as our desire would be and is, I am certain, to avoid unduly burdening small businessmen, while seeing the larger corporations, so far as possible, make their fair contribution to local, State, and municipal government bodies. I would submit that in most areas of most of our States, I believe, a corporation with an average annual income of $500,000 to $1 million would not generally be considered to be a small business.

Mr. Chairman, as we talked about small business, my colleague from Minnesota made reference to my request that Members contact their Governors and State tax officers. I hope Members will and have done so.

In Missouri, the Governor and the State legislature represent the small businessmen. It would be well for us to contact the small businessmen too, but in my State the Governor and the State legislators represent the small businessmen.

It has been stated that we have several organizations—some 50—who support this bill. I suggest that 50 States do not support this bill through their legislatures and Governors. I wonder if anyone could tell me—and I would yield—the names of the States or any State Governors who are supporting the bill, if my distinguished subcommittee chairman has that information.

Does Mr. Moore support this bill, does the gentleman know?

Mr. RODINO. Mr. Chairman, if the gentleman will yield, Mr. Moore was a great supporter of this bill. Mr. Moore worked on this study and helped develop the bill and he supported it wholeheartedly.

Mr. HUNGATE. Could the chairman tell me the names of any other Governors who support this measure?

Mr. RODINO. The former Governor of Vermont supported this bill.

Mr. HUNGATE. Any current Governors?

Mr. RODINO. I am sorry, I do not have that at the present time.

Mr. HUNGATE. Mr. Chairman, I thank the gentleman.

The CHAIRMAN. The time of the gentleman from Missouri has expired.

Mr. RODINO. I yield the gentleman 2 additional minutes.

Mr. HUNGATE. Mr. Chairman, am I correct or incorrect that the tax administrators from Ohio—whatever their

proper title is—who favored this measure were not those currently in office? I understood those named would have been serving under Governor Bricker and Governor Lausche.

Mr. RODINO. We believe that is a correct statement.

Mr. TAFT. Mr. Chairman, will the gentleman yield?

Mr. HUNGATE. I yield to the gentleman from Ohio.

Mr. TAFT. Mr. Chairman, I happen to know the gentlemen referred to, and they were very distinguished gentlemen, but I would say it is a long time since they were tax commissioners for Ohio. Since then they have been among the more successful tax practitioners in Ohio.

Mr. HUNGATE. Mr. Chairman, I appreciate the gentleman's contribution. It is worth while as always.

Mr. Chairman, when we talk about the average annual income exceeding $1 million, what do we mean? Is that for 1 year or 2 years, or is it for 20 years, or for the life of the corporation?

Mr. RODINO. We apply a 5-year period to average the net taxable income.

Mr. HUNGATE. Mr. Chairman, I thank the gentleman.

I also thank the gentleman for yielding and I thank the distinguished chairman of the subcommittee and the ranking minority member for their courtesy which they have always extended me throughout our discussion or disagreements on this measure.

I still urge the House to reject this measure.

In discussing the present chaotic tax system we have, it was said that if we pass this bill we will be able to look forward to reasonable regulations written in Washington and enforced from here—and I am sure we have all had experience with those.

(Mr. WALDIE asked and was given permission to extend his remarks at this point in the RECORD.)

Mr. WALDIE. Mr. Chairman, I am opposed to the enactment of H.R. 7906. In stating my opposition, I would like to review the arguments given in support of the bill.

It is contended that this bill is designed to assist small business. Our analysis in California shows that many of the companies that would be exempted from sales and use tax collections are large organizations that operate throughout the United States. We note that one of these companies is in the top 50 of the 500 largest industrial corporations listed by Fortune in its May 15, 1969, issue. I will place at an appropriate time in the RECORD an exhibit which lists some of the different types of businesses that would gain immunity from sales and use tax collections. The tax loss on the 25 companies listed in the exhibit would be more than $2,500,000 per year and these are merely a few of hundreds of companies that would be exempted.

What causes this problem? It occurs because under H.R. 7906 a company is not considered to have a business location in the State if its only activity consists of the solicitation of sales by employees, or others, for acceptance or shipment from an out-of-State location. An interstate business can have any number of full-time employees engaged in selling activities in a State without establishing a business location for the employer. There are many companies that operate in this manner and many more will be so organized if the tax advantage is given. It is this feature that would enable many corporations to exploit the national market and in the aggregate make billions of dollars of sales without being subject to State or local sales or use taxes.

The presence of such solicitors operating in direct competition with local businesses should subject their employers to the same tax burdens as the local businesses. Otherwise, the local businesses are operating at a tax disadvantage which, in the case of California, is 5 percent.

It is contended that the revenue loss to the States would be insignificant. This is a highly misleading argument. The report of the Judiciary Committee is inaccurate and understates tenfold the California loss on sales and use taxes. It may be assumed that similar errors were made with reference to other States.

The corporation income tax provisions will also adversely affect California's revenues and create tax advantages for out-of-State business over locally based businesses. Such businesses already have a substantial advantage. Under existing Federal jurisdictional restrictions, some corporations employing salesmen within this State make sales of more than $10 million annually without incurring tax liability. The bill would further extend immunity from State taxation. It would also permit most interstate corporations to determine their California income by the bill's tax formula or by using California's existing formula. This provision would require all such corporations to make a double computation in order to determine the method producing the smallest amount of tax. Certainly such a requirement is contrary to the special subcommittee's avowed intention of striving for greater simplicity.

The proposal would significantly curtail State taxing jurisdiction. The enforcement of State taxing laws would be severely hampered at a time when revenue requirements are increasing at an unprecedented rate.

It is also contended by some that the State tax administrators are the principal opponents of this bill. This is not the case in California where the California State Chamber of Commerce, the California Manufacturers Association, and the California Retailers Association all actively oppose H.R. 7906. In addition, local government would be adversely affected and the League of California Cities and County Supervisors Association oppose the bill.

It is contended that Congress must act to provide uniform rules that will eliminate unreasonable and widely varying State practices. This may have been a valid argument when the subcommittee started its study in 1960, but this is no longer the case. The States have acted in recent years to remove substantially all of the inequities to which objections were made. The Multistate Tax Compact provides an excellent medium for accomplishing additional standardization in State tax administration. Federal intervention is not warranted.

I urge a no vote on H.R. 7906.

Mr. MACGREGOR. Mr. Chairman, I yield 4 minutes to the gentleman from Illinois (Mr. MCCLORY).

Mr. MCCLORY. Mr. Chairman, I did not favor this bill when it came before the House the last time for the very reasons that have been stated by some of the speakers today. I feared that it would impair the revenues of the State of Illinois unduly, and that we would suffer as a result of it, and that it would have other adverse effects in my State.

That fear has been pretty much eliminated from my thinking at this time, and I feel that the main purposes of this legislation are to eliminate duplication and to end inequities. In the application of this legislation the States would receive the revenues which they legitimately should have under their sales, use, capital stock, and income tax laws.

I do not know of any legislation that has had more thorough or more careful study than this legislation.

I do not know a legislative prerogative which is more legitimately exercised than this, nor one which the Congress has been more admonished to exercise than this authority we are exercising through this legislation.

All of us who are lawyers are aware of the many U.S. Supreme Court and other Federal and State court cases dealing with the subject of multiple sales and use taxes. We are aware of the problems which are encountered by the courts in their efforts to legislate guidelines for interpreting the conflicting State laws which exist today.

As a matter of fact, we are responding today to the admonishment of the courts to set legislative guidelines which can benefit the businessmen, the individuals, and all of the citizens of the country who are involved in interstate transactions.

So as a result of the careful and thorough study, the extensive hearings that have been held, the effort to respond to legislative demand, the effort to provide equity where inequity exists, the effort to eliminate duplication where that exists—and it exists throughout the Nation—we are afforded an opportunity today to do something quite constructive.

I might say that an amendment will be offered by the gentleman from Iowa (Mr. SMITH) which would help to secure to the States their fair share of revenues from income taxes and yet at the same time avoid duplication. I intend to support the amendment when it is offered.

No legitimate State taxes will be authorized under this bill. No extensive Federal bureaucracy will be created by enactment of H.R. 7916.

In the interests of equity and equality, the Interstate Taxation Act should be passed.

Mr. MACGREGOR. Mr. Chairman, I yield 8 minutes to the gentleman from Michigan (Mr. HUTCHINSON).

Mr. HUTCHINSON. Mr. Chairman, in 1966 when the present mayor of New

York, the Honorable John Lindsay, left Congress, I was privileged and honored to be appointed to the Subcommittee on State Taxation of Interstate Commerce to fill that vacancy. During the balance of the 89th Congress and during the 90th Congress I served as a member of the subcommittee.

I am not a member of the subcommittee in the present Congress.

A year ago, when identical legislation was reported to the House, I wrote separate views. My position, as stated in those separate views, was not an out-and-out opposition to any legislation in this field. As a matter of fact, I stated then, and my position has not changed, that I believe the jurisdictional standards set forth in the bill are fair, and they are equitable, and they are understandable and they are simple.

The part of the bill to which I objected a year ago—and my position has not changed in this regard, either—was an objection to the concept of title II. Title II has to do only with income tax questions, and it makes provisions with regard to a corporation earning income of less than an average annual income of $1 million. In order to generate $1 million of annual income an ordinary business has to have several million dollars worth of sales. So it is not a small business, really.

But any business which generates an income of not more than a million dollars is permitted under title II to some preference. Such a corporate business can choose either to pay a State income tax, and its jurisdiction to that State is admitted, in accordance with that State's laws, or it may choose to pay according to a two-factor formula which may be very foreign to that State's tax system.

I made this argument and a year ago I offered an amendment to strike title II from the bill. I do not intend to offer such an amendment this year for the reason that I went to the well and I lost, and I have not seen any particular growth in sentiment for the view that I have expressed. In other words, I do not see that the States are particularly troubled about title II, although I disagreed with it in philosophy.

The States a year ago, or at least my State, were very quick in reaction. They repeatedly told me of their opposition. A year ago I heard from my Governor and I heard from my State attorney general. Even the legislature of the State of Michigan a year ago resolved against this legislation. I must say that I have not heard from any of them this year. I have, however, heard from my State commissioner of revenue. Also last night and this morning I heard from one of the assistants in the attorney general's office of my State. The question that was raised to me on the telephone this morning was the very question that has been presented here previously today, that is to say, a challenge to the accuracy and the validity of the effect of this legislation on State revenues as it is set forth in the last three or four pages of the committee report. It says there, as to the State of Michigan—and I state this so as to put it on the record—according to the information set forth on page 13 of the committee report, with regard to sales and use taxes, Michigan will suffer no significant loss, it says, and there will be a maximum possible loss which could not exceed more than one-tenth of 1 percent. The sales and use tax revenues of the State of Michigan at the present time are $790 million. One-tenth of 1 percent of that figure would amount to only $790,000. However, I am informed that the State, yesterday, pulled out of its computer the use tax payments of its out-of-State sales taxpayers, businesses which under the definitions in this bill do not have a business location in Michigan, and it was found the revenue loss from this category of taxpayer alone would be not $790,000 but $7,580,134.21. I am informed of that by my State attorney general's office as of noon today.

So I submit, Mr. Chairman, that I do not think we should rely upon the accuracy of the statements in the back end of this report as to the effect of this bill on State revenues.

However, I say that the concepts of this bill do not disturb me, because up until 10 years ago no State thought that it could tax any out-of-State taxpayer unless that taxpayer engaged in an intrastate business within that State. In other words, unless you had a local business in that State, the State could not reach you. Then 10 years ago, in 1959, the Supreme Court of the United States started amending the law in this field. They amended it and the States woke up the next morning and found out that they had a great deal more tax power than they ever imagined they had.

The effect of this legislation now before us is simply to put the situation back as it was before the Supreme Court started to amend the law. Now, Mr. Chairman, from that standpoint I believe that this legislation is all to the good. I am disturbed about the concept of title II. I believe that the small businessmen are going to realize that title II is not going to give them what they think they are going to get, but I guess the only way they can learn is to learn through experience, so I am willing to let them learn it, and I am prepared to vote for the bill.

Mr. Chairman, I yield back the balance of my time.

Mr. RODINO. Mr. Chairman, I yield 2 minutes to the gentleman from Pennsylvania (Mr. EILBERG).

Mr. EILBERG. Mr. Chairman, I would like to clarify the effect of title II of this bill on foreign commerce.

As a former member of the Special Subcommittee on State Taxation of Interstate Commerce, Congressman CORMAN from California was one of the original sponsors of this legislation in the 89th and 90th Congresses. In this regard, the bill offered by Congressman CORMAN, H.R. 5501, is identical to H.R. 7906. It is my understanding that title II of this proposal in no way increases the tax burdens on corporations engaged in foreign commerce as compared with corporations engaged only in interstate commerce. I am sure that the gentleman from New Jersey will agree.

Mr. RODINO. Mr. Chairman, I would like to say to the gentleman from Pennsylvania that his statement is accurate, and I agree completely. Title II of the bill is intended solely and only as a limitation upon the tax otherwise payable by a business which is engaged in interstate commerce, or foreign commerce. The taxing jurisdictions already have the mechanism which avoids taxing the income from foreign commerce. This act will in no way change, nor suggest a change, in the present practice with respect to businesses that operate abroad.

Mr. EILBERG. Although the bill does not contain a specific provision to that effect, the result is implied; is it not?

Mr. RODINO. I would say to the gentleman that, yes, it is implied. All we have done here is to clarify and make more certain the method of arriving at the tax liability.

Mr. EILBERG. Mr. Chairman, as a member of this subcommittee, there are many misconceptions about H.R. 7906, the Rodino bill, on State taxation of interstate commerce.

To summarize, here are some quick facts which I hope will clear up some of these misconceptions.

H.R. 7906 is not a tax bill. It will impose no taxes of any kind, Federal, State, or local.

Second, H.R. 7906 is purely bipartisan. Laboring hard for more than 8 years, dedicated members of both major parties amicably worked together to produce and perfect this bill.

Third, H.R. 7906 will not deprive any State of any significant revenues it is now receiving, and if enacted would insure all the States greatly increased revenues through continued expansion of the mutually beneficial interstate commerce which has made this Nation the richest in the world.

The CHAIRMAN. The time of the gentleman has expired.

Mr. RODINO. Mr. Chairman, I yield 1 additional minute to the gentleman from Pennsylvania.

Mr. EILBERG. Fourth, H.R. 7906 simply provides the essential jurisdictional ground rules for a healthy business growth throughout all 50 States, by ending in a workable way the present and increasingly chaotic interstate tax procedures of most States.

Fifth, H.R. 7906 will afford direly needed protection to small businesses now plagued by a deadly maze of State and local tax liabilities, the enforcement of which would wipe out most such companies and their employees.

Mr. Chairman, for all these reasons—and for the many others cited here today and recorded in the voluminous hearings on this subject—I urge my colleagues on both sides of the aisle to vote for immediate passage of H.R. 7906.

Mr. MACGREGOR. Mr. Chairman, I yield 2 minutes to the gentleman from California (Mr. WIGGINS).

Mr. WIGGINS. Mr. Chairman, I would like to ask a couple of questions to help clarify some of the language of the bill, if I may have the attention of the gentleman from New Jersey and the gentleman from Minnesota as well.

I would like to call attention to section 522 of the bill. That section is entitled "Prohibition Against Geographical Discrimination" and provides among other things that no State law may impose a

greater sales, use or gross receipt tax upon tangible personal property originating from without the State than it would impose upon identical personal property originating from within the State.

In other words, as I understand it, this section is intended to prohibit a State from raising tariff barriers to the free flow of commerce by discriminating tax rates.

Since the term "gross receipts tax" is defined in section 505 in terms of any tax other than a sales tax measured by gross volume of business, in terms of gross receipts, or in any other terms, was it the intention of the committee to apply the term "gross receipts" to a tax measured by the value of crates of eggs, for example, barrels of oil, for example, or even gallons of wine, for example?

Mr. RODINO. Yes; the gentleman is correct.

Mr. WIGGINS. Under that interpretation then, Mr. Chairman, is it also true that a State is prohibited from imposing a discriminatory gross receipt tax which would have the effect, for example, of giving preferential tax treatment to wine produced domestically over wine produced in another State?

Mr. RODINO. Yes.

Mr. WIGGINS. I thank the gentleman for that clarification.

Mr. MACGREGOR. Mr. Chairman, I yield 1 minute to the gentlewoman from Washington (Mrs. MAY).

Mrs. MAY. Mr. Chairman, I rise in opposition to H.R. 7906. My opposition to this bill is based on what I believe to be the real issue involved; namely, tax dollars. And I urge my colleagues to consider this for a moment.

Last year when the Interstate Taxation Act was before us in the House, I showed how the revenue loss to the State of Washington, as estimated by the staff of the Special Subcommittee on State Taxation of Interstate Commerce, was both unreliable and grossly understated. At that time I submitted for the RECORD some data which proved that the subcommittee's choice of a formula to measure revenue loss was internally inconsistent and the method selected was devised to give the impression of minimal tax impact.

Let me just say now, Mr. Chairman, that although the losses estimated to the State of Washington were substantial last year, they are even more so now. I am advised that as the result of economic changes, our potential revenue loss at this time has risen to $72 million a biennium.

I am further advised that California has just prepared a similar memorandum to one prepared by the State of Washington which shows substantial losses to that State, too. If this is true of these two States, I submit that my colleagues should look closely at the question of reliability of committee figures with respect to the States and the people they represent in the Congress.

Mr. Chairman, I am interested in simplicity of taxation and I am interested in uniform jurisdictional rules. I am not, however, interested in additional jurisdictional limitations which would, in effect, relieve out-of-State businesses of tax liability in my State, thus giving them an unfair advantage, competitively, over those businesses located in my State. And that, I believe, is really what H.R. 7906 would do.

Rather than pass a bill such as H.R. 7906, Mr. Chairman, I believe we should give encouragement and support to the States, which have been moving effectively to bring greater uniformity into their taxing systems. A majority of States have, within the past several years, adopted specific legislation to provide the uniformity which the Judiciary Subcommittee had recommended. The Multistate Tax Commission now has 18 regular members and 10 associate members. Utah and North Dakota are the 17th and 18th regular members, effective May 13 and July 1 of this year. Tennessee became the 10th associate member last week on June 19.

The multi-State tax compact is either currently being considered or is expected to be considered shortly by the legislatures of several other States. Still other States are considering associate membership.

This, Mr. Chairman, is an outstanding record on the part of the States in a short period of time. Their action dramatically demonstrates recognition on the part of the States of their own problems and a vigorous and affirmative program to correct those inequities that do exist. And I feel that these actions by State and local governments should be commended and encouraged rather than discouraged and declared useless as I believe this Federal legislation, at this time, would do.

Mr. MACGREGOR. Mr. Chairman, I yield 5 minutes to the gentleman from Ohio (Mr. TAFT).

Mr. TAFT. Mr. Chairman, I have been deeply impressed by the knowledge and the depth of inquiry on this legislation. I mean this in all sincerity.

I do not know why the bill disturbs me as much as it does, but I opposed it last year and stated I thought it was confusing and dangerous then. And I still do. I suppose perhaps this comes from the fact that in my youth I practiced a good deal of law in this field.

But now I remember with some caution the words of Alexander Pope:

A little knowledge is a dangerous thing.
Drink deep or taste not the Pierian spring.

But I do think some questions ought to be asked because the field is so complex. I do not think there has been a very full assessment of the proposal by the country generally or by responsible local officials throughout the country.

I think the Senate was wise in taking a long look at this bill last year. It was said earlier a couple of times that the bill passed the House and then went to the Senate, but too late for any action.

It passed this House and went to the Senate on May 22, 1968, and as I recall, the Senate did not adjourn until sometime in mid-October. Perhaps that was too short a time. In fact, perhaps the Senate ought to take the same 7 years that the House has taken in reexamining this bill and trying to clean it up before we put it into effect and correct some of the possible ramifications that might develop from it.

But, as I said, I do not intend to challenge the knowledge of the members of the Committee on the Judiciary, I respect their ability as lawyers and respect the time and the work that they have put into this bill.

For that reason I intend in the remaining few minutes to raise just a few questions for consideration by the Senate when the legislation gets over to the other body. Some of the questions are as follows:

Is there any State association of tax officials, or is there any group of Governors in the Governors Conference or otherwise that has examined this proposal from the other side of the fence?

I think there are also some practical and constitutional questions that are bound in the bill. It seems to me it was clear from the answer of the distinguished gentleman from New Jersey to my first query to him some minutes ago that the bill does in a very real sense impose new Federal limitations upon the State taxing power. Is that not a dangerous precedent for us to be setting at a time when we seem all too often to be taking power away from the States, when the lesson we should have learned is that sometimes it is better to keep our nose out of such affairs and leave them to the States to handle unless there is some crying national need involved—and I do not believe that is true here.

Is not the approach of the interstate compact, which I recognize has not made satisfactory progress, a better approach than a statutory approach?

I wonder, too, if the setting aside of practically all of the court precedents in connection with State-taxation matters, which I believe is the effect that this bill will have, will not be a lawyer's dream rather than a taxpayer's dream. And will taxpayers not be paying out more in legal fees to lawyers to attempt to get new interpretations of the various ramifications of this bill on the State tax laws than they would be paying for the admittedly bothersome redtape which is involved in complying with some of the State tax statutes?

I wonder, too, if the bill does not violate, as I indicated earlier, the uniformity-rule provisions that many States have in their constitutions with regard to taxation, in that it sets up two different classes of taxpayers who may be taxed differently, even though they are competing with each other.

There was some mention also of the Miller case. I had explained to me what the effect of that case would be on household deliveries, but it seems to me that here again we have two possible classes of taxpayers who are in competition with each other. On the one side is the man who is shipping across a State line into a State and making household deliveries, but is also making plant deliveries, and therefore, under the present language, would have to pay a tax on the plant deliveries as well as the household deliveries, and the other man is not making any household deliveries but is simply a straight wholesaler making merely plant deliveries.

I wonder why there is an exclusion of

cost of out-of-State audits? This apparently applies as well to excluded corporations. Would not that make it extremely difficult, in the case of banks and many other institutions? I understand that we are to go into bankholding company legislation. This seems to me to raise a lot of questions as to whether or not the elimination of the cost of doing a proper audit in order to see that taxes are paid should properly be eliminated by the Federal Congress.

What about subsidiaries and subcorporations? This is not, in my opinion, really covered here. Are we going to pierce the corporate entity as we do in the case of the antitrust laws? Otherwise will there not be subsidiaries set up to avoid taxes?

These are some of the questions I hope the Senate will go into in examining this legislation.

Mr. RODINO. Mr. Chairman, I yield 5 minutes to the gentleman from Georgia (Mr. FLYNT).

Mr. FLYNT. Mr. Chairman, I rise in support of the bill H.R. 7906. I have supported this bill since the Supreme Court decisions in 1959 and 1960 made legislation similar to this imperative if we are to provide reasonably uniform treatment of taxation by the States on income derived from interstate commerce.

I associate myself with the remarks which have been made in support of this bill by the gentleman from New Jersey and by the gentleman from Minnesota and by others.

I have worked very closely with the members of the Judiciary Committee, including the gentleman from New Jersey (Mr. RODINO), who is now chairman of the Subcommittee on State Taxation of Interstate Commerce. Prior to that, during his service in this body, I worked very closely with the gentleman from Louisiana, Mr. Willis. Of course, I have worked with the minority members, including the gentleman from Minnesota (Mr. MACGREGOR), Governor Moore, of West Virginia, a former Member of this body, and with the other members on the minority side.

I have long recognized the crying need for legislation of this kind. This is a difficult bill to understand fully and to comprehend. It is even more difficult to explain this bill fully, to those who are interested in it so that they, too, can listen and understand it. I think the remarks made by the gentleman from New Jersey, the gentleman from Minnesota, and others in support of this bill have been illuminating and clear and should have resolved the doubts of anyone who might have been otherwise inclined to oppose this legislation.

When this legislation was first proposed, I supported it, because I thought it was right, and I supported it because I thought it was absolutely necessary.

When the Governor of my State and the revenue commissioner of my State initially came out in strong opposition to it, I recognized immediately I was going to have to do my homework on this subject if I were going to be able to withstand any assaults they made on me and other members of the Georgia delegation who supported legislation which at that time the Governor and commissioner opposed. The Governor and revenue commissioner of our State came to us and asked us to oppose the concept and the principle of this legislation on the theory it would cost the State of Georgia several million dollars, in State revenues.

After having become knowledgeable enough on this subject and after having discussed it with the tax experts, including the revenue commissioner of my State, I readily admitted to him that it might cost the State of Georgia some money, but I sought to convince the Governor and the revenue commissioner of my State that whatever the State lost in revenue, it would be made up to the taxpayers—businessmen who engaged in interstate commerce outside the State of Georgia and by consumers within the State of Georgia who would benefit tenfold or more in ratio to the small loss of revenue that the State of Georgia might incur.

It took a long time to get this point of view across, but finally the Governor of our State, and the revenue commissioner, came up with a proposal which was submitted to the Committee on the Judiciary and accepted by the Committee on the Judiciary, and by the subcommittee which handled this legislation, which met all of the objections which the revenue officials of our State had theretofore had. We worked out an effective compromise in language without compromising principle.

Mr. Chairman, we feel this is legislation which will be of tremendous benefit to businessmen in Georgia who are engaged in a substantial amount of interstate commerce. It will also be a matter of substantial savings to consumers in Georgia who buy goods which come into Georgia through the means of interstate commerce. This bill might well be named—in addition to the title it bears—a bill for the benefit of consumers and for small businessmen.

Mr. Chairman, I listened with a great deal of interest to the very persuasive arguments made by the gentleman from Missouri (Mr. HUNGATE), a distinguished lawyer, when he gave the disadvantages which would accrue to his State if this bill should become law.

I would say to the gentleman from Missouri and also to the gentleman from Washington (Mr. ADAMS) who engaged in a colloquy with him, that it is true that the figures which were cited by the gentleman from Missouri and the gentleman from Washington (Mr. ADAMS) might very well be accurate, but I would say to the gentleman from Missouri, whatever loss might accrue in revenues to the State of Missouri would be more than made up in savings to businessmen and manufacturers and consumers in his State of Missouri.

We in Georgia are surrounded by four States and the Atlantic Ocean, We were confronted once with the same arguments which I am sure have been made to the gentleman from Missouri. We have tried to work this matter out consistent with what is right and what is necessary.

The CHAIRMAN. The time of the gentleman from Georgia has again expired.

Mr. MACGREGOR. Mr. Chairman, I yield to the gentleman 1 additional minute.

Mr. HUNGATE. Mr. Chairman, will the gentleman yield?

Mr. FLYNT. I gladly yield to the gentleman from Missouri.

Mr. HUNGATE. I would inquire in what way this would be made up in sales?

Mr. FLYNT. I did not say it would be made up in "sales." I said it would be made up in "savings" to consumers and in both gross and net income to the manufacturers in the State who are engaged in interstate commerce without any substantial loss to any State.

That is true for the reason that it would clear the air of uncertainty as to what States other than the State of Missouri could do to those very people who are engaged in interstate commerce.

The people who have told me they are concerned about the need for this legislation have told me it takes additional tax counsel and additional clerical and inhouse legal and tax experts to advise them as to what they might expect not only from what other States can do but from what other States will do even if permitted to levy unreasonable and discriminatory taxes against them.

The CHAIRMAN. The time of the gentleman from Georgia has again expired.

Mr. RODINO. Mr. Chairman, I yield the gentleman 1 additional minute.

Mr. FLYNT. I believe that if the gentleman from Missouri and others who have expressed opposition to this legislation would undertake to find out the need for clarification which is necessary to avoid discriminatory and sometimes double taxation which accrues to manufacturers who engage in interstate commerce, and also to avoid additional costs to consumers who are required to buy goods coming in through interstate commerce, most of their objections could be reconciled.

Mr. HUNGATE. Mr. Chairman, will the gentleman yield further?

Mr. FLYNT. I yield again to the gentleman from Missouri.

Mr. HUNGATE. Could the gentleman tell me why the breaking point of $1 million? If it is a good bill, why is it not good for everyone?

Mr. FLYNT. I believe that question could be more properly answered by the members of the subcommittee who are the floor managers of this bill, but if I have time, I shall be glad to give my reasons why I think so.

One reason—and perhaps not the only reason but certainly a compelling reason—is to get some legislation of this kind on the books so that we can know what it will do. If it becomes necessary to extend the figure beyond $1 million or to reduce it we can do it if and when we have had the benefit of experience with this legislation which we are advocating the passage of today.

Mr. HUNGATE. I thank the gentleman for his answer and his comments.

Mr. FLYNT. Mr. Chairman, this is sound legislation, and while it may not be perfect it is a necessary step in the right direction. I urge its passage and I hope that it will receive an overwhelming majority in the House of Representatives.

Mr. MACGREGOR. Mr. Chairman, I yield 2 minutes to the gentleman from Washington (Mr. PELLY).

Mr. PELLY. Mr. Chairman, I oppose H.R. 7906 as I did last year when a similar bill was before the House, and for the same reasons.

For one thing, I should point out that, contrary to the committee report on this bill, its enactment would substantially decrease State revenues. As far as my own State of Washington, a careful study by our State officials this year indicates that this Interstate Taxation Act would reduce my State's income by $72 million per biennium. Likewise, I understand other States would be adversely affected.

I remind my colleagues that witnesses for 46 States testified on this bill in 1967, and they pointed out that this legislative approach could cost the States dearly in income, shift the burden of taxation among taxpayers, and impede their administration of their own tax laws.

The members of the Multistate Tax Commission, meeting in Houston, Tex., just this past June 20, decried the passage of H.R. 7906, again stating that it would seriously decrease State and local revenues beyond normal economic growth levels. Their feeling was that preferential immunity and exemptions inevitably must decrease actual State and local revenues.

The statement released by the Multistate Tax Commission at their Houston meeting said that even more fallacious is the allegation in the committee report that the States have imposed trade barriers on the national economy. Unprecedented prosperity and the record high gross national product levels refute the existence of such barriers.

The member States of the Multistate Tax Commission urge Congress to consider realistically the revenue impact of the proposed bill on State and local governments as well as the competitive disadvantages which the bill inflicts upon local businesses which will not be able to qualify for the prefential tax immunities which the bill would create.

Mr. Chairman, I would hope my colleagues would evaluate the effect of this bill on the revenues of their respective States. And I urge my colleagues to consider the matter and vote this bill down.

Mr. MACGREGOR. Mr. Chairman, I yield 2 minutes to the gentleman from New York (Mr. FISH), a member of the Committee on the Judiciary.

Mr. FISH. Mr. Chairman, as a subcommittee member and a sponsor of an identical measure, H.R. 10166, I rise in support of this bill, H.R. 7906.

I commend the gentleman from New Jersey, the distinguished chairman of the subcommittee, for his able leadership once again in steering this bill to the floor.

This is a good and necessary bill and a help to all small businesses engaged in interstate commerce, to protect them from unequal tax burdens.

I now insert in the RECORD a letter from the New York commissioner of taxation and finance to the chairman of the Committee on the Judiciary, the distinguished gentleman from New York (Mr. CELLER), dated June 20, 1969:

STATE OF NEW YORK, DEPARTMENT OF TAXATION AND FINANCE,
Albany, June 20, 1969.

* * * * *

The New York State administration agrees that interstate business should have protection from unreasonable state and local tax requirements. However, as Governor Rockefeller stated in his letter to you, dated January 13, 1967, several changes are still needed to make this bill acceptable.

Specifically, a provision is necessary in Title II for a receipts factor based on destination. Without such a provision, the economic climate of New York and other highly urban industrial states would be seriously impaired. This change would not only make the bill more equitable but would bring it more nearly into conformity with the allocation procedures now employed in almost all of the states.

A second change needed in the bill is the elimination of Section 305 which restricts the classification of interstate sales according to geographic areas of a state. Unless this change is made, the bill would virtually preclude the continuance of local taxes of the type now imposed in New York State. While business in general would undoubtedly be gald to avoid the necessity of collecting and segregating local sales taxes, the importance of local nonproperty taxes in preventing unbearable taxes on property is also well recognized. Thus, until a more satisfactory alternative is available, nothing should be done to destroy this local tax source.

A third necessary change is the elimination of the double standard for treating firms above and below one million dollars of average annual income. This distinction would create confusion and inequities for New York firms that are taxable in other states. A corporation might fall in one class in one year and in the other class the next year. With most state constitutions requiring uniformity of treatment, this arbitrary distinction represents an undesirable innovation which would result in much litigation.

In addition to the above changes in the Interstate Taxation Act, which New York has previously requested, I should call your attention to the undesirable effects that would result from enactment of H.R. 906, which the Rules Committee has recommended for consideration as an amendment to H.R. 7906.

This latter bill is not relevant to legislation regulating business taxes, since it relates to individual income taxes. Furthermore, hearings have not been held on this proposal and the states have not been given any other opportunity to present their views.

The domicile test which this proposal would establish as the sole criterion of taxation of income earned in another state would conflict with the present New York rules under which nondomiciliaries who maintain homes in New York and who spend more than 183 days here, are taxed as New York residents. This might be interpreted as preventing our taxing the New York rental income and/or various types of New York business income received by nondomiciliaries.

Superimposing a special set of domicile rules on our existing statutory resident and nonresident definitions and procedures could also require drastic changes in our statute which would have significant revenue effects. For example, it is probable that the proposed legislation would not permit us to tax income from intangibles owned by nondomiciliaries who are presently taxable as New York residents under the permanent-place-of-abode/183-day test of our statute.

Our present statute on the application of the personal income tax to nonresidents reflects almost fifty years of administrative experience in this complex area. We believe it is worth noting that the uniform definition of "resident" recommended by the Advisory Commission on Intergovernmental Relations is, with only one minor difference, derived verbatim from our statutory provision. (See Commission Report A–27 (dated October 1965) entitled "Federal-State Coordination of Personal Income Taxes—page 30).

While I believe that the subject of personal income taxes should not be included in any bill on the taxation of interstate business, I have indicated substantive objections to the present proposal for your information.

Sincerely yours,

JOSEPH H. MURPHY,
Commissioner.

Mr. MACGREGOR. Mr. Chairman, I now yield 4 minutes to the gentleman from Idaho (Mr. MCCLURE).

Mr. MCCLURE. Mr. Chairman, I, too, rise in opposition to this measure, as I did a year ago.

I want to make further reference to the report of the Multistate Tax Commission to which the gentleman from Washington (Mr. PELLY) made reference. I would like to read that to you, because I think it is revealing with regard to experts' opinions from several States who have studied this matter not from the standpoint of uniformity, necessarily, as this committee's staff has done, but from the standpoint of the impact on the States and the prerogatives which this bill invades which properly belong to the States.

STATES DECRY CREATION OF HUGE TAX LOOPHOLE, CONDEMN H.R. 7906

Contrary to the report of the House Committee on the Judiciary issued on June 2, 1969, the Interstate Taxation Act (H.R. 7906) will substantially decrease state revenues if enacted into law. This emphatic assertion was made today, June 19, 1969 by the Multistate Tax Commission at its conference in Houston.

The House Judiciary Committee Report stated that H.R. 7906 would increase rather than decrease state revenues. The report claimed that the bill would increase state revenue by:

(1) Promoting economic growth by removing alleged "trade barriers" between states; and

(2) Producing greater ease of enforcement and compliance.

Analysis of the Committee's six-year study fails to disclose any valid statistical support for these conclusions.

The member states of the Multistate Tax Commission recognize that normal economic growth will increase revenues. However, it is patent that H.R. 7906, now commonly known as the "Rodino Bill" will seriously decrease state and local revenues beyond normal economic growth levels. Preferential immunity and exemptions inevitably must decrease actual state and local revenues.

Even more fallacious is the allegation in the Committee Report that the states have imposed trade barriers on the national economy. Unprecedented prosperity and the record high gross national product levels refute the existence of such barriers.

The allegation that the proposed bill would ease compliance and thereby would increase state revenues is wrong. The member states of the Multistate Tax Commission have found that H.R. 7906 would actually have the reverse effect. The compliance costs under H.R. 7906 would be increased for multistate corporations subject to tax. This is so because the bill would result in corporate taxpayers having to make one computation in order to determine their liability under existing state law and a second computation in order to determine their tax liability when taking into account the preferential options afforded by H.R. 7906.

The true effect of the bill is not only to decrease state revenue and increase compliance and administrative costs, but also to grant many multistate firms the opportunity to exploit many state markets free of tax consequences. It would exempt these firms from paying their fair share of state and local taxes. In addition, it would cause corporations to re-arrange their business to take advantage of the exemptions and preferential treatment arbitrarily provided by the bill.

The Committee Report also lists by individual states certain percentages which it claims reflect maximum possible revenue losses. If these percentages were correct, the total revenue loss for all of the states would be approximately 12½ million dollars per year (according to the 1967 tax revenues of the various states published by the United States Bureau of the Census). In point of fact, there are several states each of which would suffer a loss much greater than 12½ million dollars if the bill were to pass; and every state would suffer a loss of revenue many times greater than that estimated by the Committee Report.

The member states of the Multistate Tax Commission urge Congress to consider realistically the revenue impact of the proposed bill on state and local governments as well as the competitive disadvantages which the bill inflicts upon local businesses which will not be able to qualify for the preferential tax immunities which the bill would create.

GEORGE KINNEAR,
Chairman.

Mr. Chairman, I have checked with my State, and they state, instead of what is said in the committee report that there would be a .01 percent of loss to the State of Idaho, that they would lose $3 million in corporate income tax revenues.

Further, that there would be 1,600 corporations now paying use and sales taxes that would escape taxation if this measure is passed.

Mr. Chairman, I believe what we are doing, instead of closing loopholes at a time when we are talking about tax reform and closing loopholes, is that we are opening a new loophole for the large corporations, one in which they will save millions of dollars, which burden will be transferred to the small businesses that the committee says are going to be aided by the bil. If there is a loss of revenue to a State it must be made up by other taxpayers. There is such a loss of revenue.

These consumers, these small businessmen who are supposed to be aided by the passage of this legislation will be picking up the burden that the large, multi-State corporations will succeed in shifting from their shoulders to the shoulders of the small taxpayers.

I support the efforts of the gentleman from Iowa (Mr. SMITH) to avoid multiple taxation of individuals and regret that he intends to attach it to this legislation. It should stand on its own. I will have to oppose the bill even though this desirable provision is added.

The CHAIRMAN. The time of the gentleman has expired.

Mr. RODINO. Mr. Chairman, I yield 1 minute to the gentleman from Wisconsin (Mr. KASTENMEIER).

Mr. KASTENMEIER. Mr. Chairman, I would like today to express my strongest support for a vitally needed piece of legislation, H.R. 7906. The same relevant considerations that led to last year's overwhelming nonpartisan vote in the House in favor of this measure apply now, and perhaps with greater force because still another year has passed with our Nation's commerce impeded by the lack of a rational, fair system for the taxation of interstate commerce.

As a member of the Special Subcommittee on State Taxation of Interstate Commerce, I have been shocked and disappointed to learn during the course of the long and thorough study of this matter, that it is frequently easier to market American products in foreign countries than it is for our small businesses in particular to make shipments to other States here at home. As a result of the increasing dissatisfaction over the burdensome and wasteful manner in which interstate companies are obliged to pay their State taxes, I, along with many of my concerned colleagues in this House, have introduced identical legislation to meet the clear need for remedial action.

I wish to emphasize the point that under this bill one State's gain will not necessarily mean another State's loss since it is expected that this proposal will bring about an increase in the revenues of all States. This will come about as a result of the removal of the trade barriers between the States and also because of the greater ease of compliance which will be obtained under the uniform standards established by H.R. 7906.

Mr. Chairman, if our national market is to be open to all of our citizens, and if our small business enterprises are not to be drowned in a sea of paper, the passage of this bill is imperative, I urge all of my colleagues to consider the benefits that will certainly flow from this bill and cast their votes accordingly. At a time when trade barriers between nations are still a cause of controversy and a waste of effort and resources, it is incumbent upon our own Nation to smooth the flow of commerce across our own internal boundaries and thereby stimulate greater economic benefits for producer and consumer alike.

Mr. MACGREGOR. Mr. Chairman, I yield 2 minutes to the gentleman from Iowa (Mr. SCHERLE).

Mr. SCHERLE. Mr. Chairman, the Interstate Taxation Act—H.R. 7906—now before the House, is desperately needed by the small businessmen of Iowa and of the Nation. I am pleased to give this important legislation the unqualified support it deserves.

Many small- and medium-sized businesses of southwest Iowa manufacture products which would be readily marketable in other States. These enterprises are hampered and discouraged from expanding their production and marketing in other States despite the fact that they have no employees, offices, or property in any State except Iowa. They would be subjected to an increasing maze and multiplicity of varied, confusing, and burdensome State and local tax laws and regulations in almost every State in which they would attempt to do business.

The great administrative problems which now result from any interstate operations has thwarted many firms in their aspirations of marketing their products even in immediately adjacent States. As a result of this situation, the great "American common market" is being increasingly fractionalized, with consequent economic loss to business, to the consumer, and to the Nation generally.

Since 1961, the House Special Subcommittee on State Taxation of Interstate Commerce conducted exhaustive hearings and studies on this serious situation. As a result, the House Judiciary Committee recommended enactment of H.R. 2158, the Interstate Taxation Act, in the 90th Congress. I was pleased to join with the great majority of my colleagues in passage of that legislation, and I urge the House today to pass H.R. 7906, the bill identical to H.R. 2158 as reported in the 90th Congress.

H.R. 7906 is designed to protect business, particularly small- and medium-sized businesses, from conflicting and chaotic multiple-State taxation. It provides national guidelines which allow interstate business to pay its fair share of State and local taxes, with reasonable assurance as to what its obligations are, and with confidence that it will not be subjected to multiple and unfair taxation or intolerable bookkeeping and other compliance burdens.

I generally am opposed to any legislation which diminishes power of the individual States and tends to centralize power in the Federal Government, and so carefully scrutinized the present bill. I am satisfied that H.R. 7906 is an appropriate and reasonable exercise of Federal legislative authority. It provides vitally needed protection for the basic principle to which our great economy owes so much of its success—the principle that our national market is common to all our States and open to all our citizens—yet it provides minimal Federal interference with State taxing discretion and revenue. No Federal administration or supervision would be provided under this legislation. The bill's guidelines are essentially procedural, and will permit State and local governments to pursue their tax policies with respect to interstate companies in a manner consistent with the realities of a multistate or nationwide business.

The Interstate Taxation Act provides a uniform jurisdictional rule based on the maintenance of a "business location" for imposition of corporate net income, capital stock, and sales use and gross receipt taxes with respect to the sale of tangible personal property. Net income or capital of smaller companies could be divided under an optional two-factor—property and payroll—apportionment formula.

In the sales and use tax area, the bill provides rules for locating sales for tax purposes in the State of destination, credits for prior sales or use taxes paid, exemption for household goods of new residents, uniform treatment of freight charges, accounting for local sales taxes, conclusiveness of resale and exemption certificates, and encouragement of direct payment of sales or use tax by business buyers. Out-of-State audit charges would be prohibited. A remedy would be provided for geographical discrimination by the States in the sales tax and gross receipts tax area. The bill further provides for a continuing evaluation by Congress of State progress in resolving any

problems still not solved by the present legislation.

Study of this matter has convinced me that immediate Federal legislation is necessary, in the absence of sufficient States agreeing to any multistate compact solution, if appropriate relief is to be provided American business from an intolerable situation. I believe the stimulant that enactment of H.R. 7906 will provide for expansion of production and sales by Iowa businesses will widely benefit the economy of Iowa and provide substantially increased State and local revenues in the long run, and will benefit the Nation generally. H.R. 7906 provides a reasonable and proper Federal legislative approach to a difficult problem without imposing a new set of Federal bureaucratic superstructure, and it deserves full support by this House, by our companion body, and by the administration.

Mr. MACGREGOR. Mr. Chairman, I yield such time as he may consume to the gentleman from Oregon (Mr. DELLENBACK).

Mr. DELLENBACK. Mr. Chairman, I rise today to join with the State of Oregon and other signatories to the multistate tax compact in opposition to H.R. 7906, a bill which would provide a system for the taxation of interstate commerce. This bill, in the opinion of those States which are making substantial progress in developing their own approach to interstate taxation, is unnecessary and possibly harmful.

Admittedly there has existed for a number of years a problem in this area of interstate taxation. But a growing number of States have moved to solve this problem, and they have moved on a sound basis. After careful study and extensive discussion a compact was created which any State is free to join, on either a full membership basis or an associate membership basis. This compact, known as the multistate tax compact, now has 18 full members and an additional 10 associate members. These numbers have steadily grown and will continue to grow if H.R. 7906 is defeated in this Congress.

Not only does this multistate tax compact have the point of superiority of being an agreement voluntarily arrived at and agreed to by those States which have lived with and studied this problem most carefully.

The multistate tax compact is also an approach to the basic problem which is considerably superior to H.R. 7906. The compact provides for greater uniformity, simplicity, and equity in this field of interstate taxation, without the anticipated tax losses to some States foreseen in the passage of H.R. 7906.

The multistate tax compact contains provisions which better promote uniformity in apportionment so as to avoid multiplicity or duplication of taxation. It provides a simple way for a company having a minimum amount of sales—$100,000 or less annually—to pay a flat rate on such sales without having to file a complicated return.

It gives taxpayers a forum within which to obtain a uniform determination as to apportionment problems, which would be binding on all compact states. It is so constructed that no taxpayer would pay a greater amount of taxes and no State would lose jurisdictional benefits by joining the compact.

I urge that H.R. 7906 be defeated and the individual States be truly encouraged to continue not only to push their sound and constructive solution to this particular problem of interstate taxation, but also to move forward into similar creative State-level solutions to other problems of similar importance.

Mr. MACGREGOR. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I think it would be delightful if we, the members of this subcommittee, could say to the Members of the House that all 50 of our States plus the District of Columbia have come forward and have participated in a meaningful interstate compact to take care of all the problems raised over the last decade by the proliferation of sales taxes, use taxes, and income taxes. That has not been the case.

Ample time has been provided to the States to deal with this matter. Really only one alternative remains—that this House give a resounding vote of approval in a few minutes following the adoption of the amendment to be offered by the gentleman from Iowa (Mr. SMITH) to H.R. 7906.

Mr. GROSS. Mr. Chairman, will the gentleman yield?

Mr. MACGREGOR. I yield to the gentleman from Iowa.

Mr. GROSS. I thank the gentleman for yielding.

Mr. Chairman, the enactment of this legislation into law will solve a very troublesome situation in the State of Iowa.

I heartily support the measure and commend the committee for bringing it to the floor of the House.

Mr. MACGREGOR. I thank the gentleman from Iowa (Mr. GROSS) for his gracious remarks.

Mr. Chairman, I have no further requests for time and yield back the balance of my time.

Mr. RODINO. Mr. Chairman, I yield 1 minute to the gentleman from Indiana (Mr. JACOBS).

Mr. JACOBS. Mr. Chairman, I rise in support of this legislation.

I compliment the gentleman from New Jersey for the long and tireless hours he has devoted in bringing this legislation to the floor of the House and to say that I am proud to have been a member of the subcommittee that he has chaired.

Mr. RODINO. I thank my colleague.

The CHAIRMAN. The time of the gentleman has expired.

Mr. RODINO. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I merely will conclude by saying reference has been made to a multistate compact. I would like to inform the House that during the protracted and prolonged hearings we held, I inquired of many of the tax administrators who urged the adoption of a tax compact whether after a period of some 4 years if they were not able to bring about a multistate tax compact would they then support a measure such as this?

I did not receive an affirmative answer from any one of the State tax administrators.

The heart of the question is whether or not we are going to be able to eliminate the chaos and confusion and permit interstate commerce to flow so that companies can do business in the common market of America.

I think this bill does that and I urge its support.

Mr. Chairman, I yield back the balance of my time.

Mr. DORN. Mr. Chairman, the Interstate Taxation Act represents the fruits of nearly 10 years of study and discussion on the part of the Congress. It is time to enact this bill to regulate and foster commerce among the States by providing a system for the taxation of interstate commerce.

Some objections have been raised that this legislation might abridge States rights. Nothing could be further from the fact. This program, to bring order and equity to the taxation of interstate commerce and to relieve American business in every State of avoidable burdens and unnecessary costs, was initiated by such able legislators as the late Senator Harry Byrd of Virginia, and Francis Walter of Pennsylvania, as well as Ed Willis of Louisiana. These men were devoted to the autonomy of State and local governments.

As a Member of Congress who has consistently opposed any form of Federal encroachment on the rights and powers of the separate States, I can assure you that the present measure will, rather than abridge the powers of State governments, will strengthen the States.

The success of the American economy is owed primarily to free and expanding trade within the borders of our Nation. We were the first "common market" and every citizen has benefited in one way or another from the free flow of trade among our States, unimpeded by tax or tariff barriers.

It will preserve and enhance the benefits of a free and expanding trade to establish uniformity in State taxation rather than follow a course which would lead to one State imposing taxes on businesses domiciliary in another State.

We owe it to both the businessman and the consumer to protect interstate commerce from unnecessary burdens, all of which add to the cost of doing business and ultimately to the price that people must pay for goods and services.

We need, in particular, to insure that every small businesman in your State and in mine is able to share in the advantages of a free and expanding national market.

In my State of South Carolina this measure will mean that a local businessman can maintain all of his assets and all of his employees in South Carolina and sell the national market without the burden of taxes in which he has no business location and no political representation.

In today's highly competitive world it is vital that we relieve small business of unnecessary burdens and costs which impede his ability to compete. This legislation will accomplish that and it could

well mean the difference between failure or survival for the small manufacturer, the wholesaler, the retailer, and others engaged in interstate commerce from a base within a single State or several States.

While such businessmen may not play a large part in the vast American economy, they are of great importance to their local communities and we strengthen our States by strengthening their ability to compete in the total U.S. market; for their payrolls, their profits and their taxes are vital to the economic well-being of our States.

I am supporting this measure and I so urge my colleagues as enlightened legislation which will set uniform standards benefiting business in whatever State it may be situated and thus benefiting the State itself.

Mr. HORTON. Mr. Chairman, I rise in support of H.R. 7906 which seeks to foster commerce among the States by setting up a workable and equitable system of State taxation of interstate commerce.

It was my privilege, early in the first session of the 90th Congress, to testify before the distinguished members of the House Judiciary Subcommittee which was at that time considering the results of a study of many years on the problems of interstate businesses posed by overlapping State tax requirements and liabilities. As one who had sponsored an earlier version of this bill in the 89th Congress, I was most impressed with this subcommittee's grasp of the problems posed in this area.

The Subcommittee on State Taxation of Interstate Commerce skillfully molded testimony heard from numerous Members of Congress, from State tax commissioners, and from businessmen into a commendable bill, H.R. 2158, which this body passed last year.

The problem, simply stated, is this. The States and localities are badly in need of additional revenue. The tax-budget squeeze has grown worse at the State level in every succeeding year. Thus, the States have not hesitated to reach out with their taxing powers, to claim jurisdiction over income that is not wholly generated within a given State, or that is generated by a business located in several States.

The result of these sincere and, in some cases, necessary efforts on the part of the States to generate more revenue has been an intolerable paperwork task, and often, an inequitable tax result for the businesses operating interstate.

In many cases, businesses without access to sophisticated computer bookkeeping systems, and without legal departments well staffed with tax experts have found it impossible to determine how much tax is owed, on what income, and to which State or States.

This burden of double taxation and paperwork has fallen hardest on the shoulders of the small businessman who has interstate operations. As a member of the Select Committee on Small Business, I am particularly sensitive to the need for this legislation for these people.

This legislation provides reasonable guidelines for levying and collecting certain taxes in the realm of interstate commerce by the several States. It seeks to untangle the web of conflicting taxation that many businessmen find themselves caught in. It is worthy of our full support at this time, so that in this Congress, the Senate will have adequate time to consider this legislation before adjournment next year.

Mr. Chairman, I also want to lend my support to the well-considered amendment offered by our distinguished colleague from Iowa (Mr. SMITH) to provide similar protection from double taxation for individuals who for occupational or other reasons have residences, domiciles or abodes in more than one State.

In our increasingly mobile society, the States must recognize the difficulties their overlapping rules which determine "residency" for tax purposes cause for many families. Mr. SMITH is to be commended for taking the initiative in providing fair Federal guidelines in the area of individual income tax as well.

I trust our colleagues will join in the support of this amendment.

Mr. HANNA. Mr. Chairman, last year, the House passed H.R. 2158, sacrificing the interests of local business communities in the name of uniformity. Except for the provision as to double taxation of personal income, left out of this year's bill, H.R. 7906 is identical to 2158.

The House was wrong in passing H.R. 2158 last year. We would be wrong in passing H.R. 7906 this year.

The Special Subcommittee on State Taxation of Interstate Commerce, began hearings on this subject matter 8 years ago. The need for reform in this field of taxation was then clear. But this fact, as well as the obvious fact of the painstaking and dedicated efforts of this subcommittee, should not in and of themselves insure the passage of 7906. The bill must rise or fall depending upon its own virtues. I believe its faults are greater than its virtues.

I find at least four major faults with this bill. The first is that the "excluded corporation" provision is inadequate. A second, and potentially more serious fault is that the phrase "business location," in section 511 of this bill, is ill defined.

These two faults alone are enough to make us stop and think seriously about passing this bill—even if this bill were to achieve the objectives its authors claim it has achieved. But there are two other things wrong with this bill. First of all, the bill does not establish a uniform system of State taxation of interstate commerce—and a desire for uniformity in this field of tax law was what originated the whole process of subcommittee hearings and reports that has resulted in this piece of legislation.

And finally, there is one other flaw in this bill. It was pointed out by the gentleman from Michigan (Mr. HUTCHINSON), 2 years ago, to his fellow members of the Judiciary Committee, and I do not know why they have not followed his advice on this. The gentleman from Michigan (Mr. HUTCHINSON), told them then "Get rid of the two-factor system," the system the committee wanted to use for apportioning the income tax of interstate companies. Mr. HUTCHINSON told them "Get rid of the two-factor system, and substitute the three-factor system instead. All the States use the three-factor system." Uniformity demands that the Judiciary Committee use the three-factor system in its bill too. But we still have the two-factor system incorporated into this bill.

I would like to go over each one of these four points I have brought up in more detail to show you exactly what my objections to them are.

The first point I mentioned had to do with the "excluded corporation" clause. This provides that interstate companies with an average sales earnings of over a million dollars are susceptible to State taxation. But, in H.R. 7906, it only applies to the income tax and not the sales tax provision of the bill. It should apply to both.

Then, there is the matter of section 511 of this bill—what I shall call the business location clause. The crux of this bill lies in the way this section is applied. Chairman CELLER, in his excellent Fordham Law Review article, summed up the importance of this phrase, "business location." He described the effect of 2158 as follows:

> A company would not be subject to the jurisdiction of any state in which it does not maintain a "business location," which is defined to include: the owning or leasing of real estate, the maintenance of a localized employee, or the regular maintenance of a stock of tangible personal property for sale in the ordinary course of business.

There you have the three criteria for "business location," as explained by Mr. CELLER himself. The first and third criteria—owning or leasing of property, and maintenance of merchandise in the area—can both be evaded by some types of companies. For example, neither criterion covers any type of company which uses independent salesmen taking orders from customers within the State, and then mailing the merchandise to the customer after the sale is made.

But the second criterion—"maintenance of a localized employee"—is the weakest of all.

Section 513 of the bill defines a "localized employee." This section is so weak as to be nearly meaningless. Almost anybody doing substantial business in more than one State can avoid coverage by section 513. For example, a company doing business in both Kansas City, Mo., and Kansas City, Kans., can rotate its salesmen continuously across the border and back again, and escape paying sales or income tax to either State; 513 does not cover salesmen if they do not have their services localized in one State, or if they do not have a base of operations in one State.

The inequity of 513 is obvious. Suppose the kind of company I just mentioned, doing half its business in Missouri and half in Kansas, has 10 salesmen. If five of its salesmen worked permanently in Kansas City, Mo., and five worked permanently in Kansas City, Kans., under 7906, it would have to pay income, sales, and use tax to both States. But, now suppose the company decides to shift all its salesmen around—back and forth from one city to the other, so that each salesman spends half his time in Kansas, and

half his time in Missouri. Under 7906, the company cannot be taxed by either State. There is no real uniformity in a bill that brings about two situations like that.

Take a greeting card company operating in both Kansas City, Kans., and Kansas City, Mo. The salesmen travel to different cardshops in the area—all they carry with them are catalogs of card samples to show to the retailers. Under 7906, this company cannot be taxed by either State. It owns or leases no real property in either Kansas or Missouri. It does not maintain a stock of tangible personal property for sale in the ordinary course of business—all the salesmen carry around with them are the card catalogs, and these salsemen, traveling back and forth from Missouri to Kansas, do not have a base of operations in either State.

So this company, under 7906, would pay no income, sales, or use tax to either Missouri or Kansas. But it is doing business in both States. It depends for its livelihood upon the retailers in both States, the better the business climate is in both States, the more the company prospers. But the State governments cannot touch it, and I believe that is inequitable.

A great jurist, Chief Justice Stone in one of the landmark Supreme Court cases of our time, said a quarter of a century ago:

> To the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that privilege may give rise to obligations.

Stone said that imposing a tax on the corporation was such a justifiable obligation. H.R. 7906 clearly goes against the spirit of what he said.

I am not arguing that no reform is needed. Mr. CELLER points out in his law review article that some companies, with relatively small annual earnings operate in what he called "a truly national market" and, by so doing expose themselves to a multitude of State taxes. No one is denying that it is unfair to require such companies to meet all the requirements imposed upon them. Such diversity is inequitable.

But the Federal legislation itself does not establish as great a degree of uniformity upon State taxation of interstate companies as do the recent cooperative efforts of the States themselves. Working through the multi-State tax compact, and the Uniform Division of Income for Tax Purposes Act, the States have developed a program that establishes a more uniform system, and is broader in scope, than is H.R. 7906.

So we are faced now with a far different situation than our distinguished former colleague, Mr. Willis, was faced with when his subcommittee began studying this situation back in 1961. We all gratefully acknowledge the tremendous achievement of the Special Subcommittee of State Taxation of Interstate Commerce. It has worked long hours. It has compiled a brilliant four-volume work that is a masterpiece in its field. It has brought to the attention of all of us, the need for reform in this specialized area of tax law. The work it has done is of inestimable value.

But the greatest contribution of this subcommittee has not come from any proposed Federal legislation resulting from its efforts. Its contribution has come from the fact that the issuance of this report in itself provided the needed impetus for the States to go ahead and establish reforms on their own. The State reforms are more than adequate. Some students in the field believe that the State standards, particularly in regard to the three-factor formula for determining corporate income tax, are technically better than the Federal standards.

I should now like to draw your attention to the basic reason why I feel the State standard is preferable to the Federal standard. It is the same thing Mr. HUTCHINSON was talking about 2 years ago. H.R. 7906 uses a two-factor formula to determine the amount of income tax to be collected on those interstate companies that do have a business location within the State. The Uniform Division of Income for Tax Purposes Act, adopted by 18 States, includes the more comprehensive three-factor formula. This formula considers property, payroll, and receipts. It is used individually by all the States. Thus, the States adopting the Uniform Division Act for interstate corporation taxation, have achieved uniformity with the individual State corporation tax systems, with the adoption of H.R. 7906, such uniformity would be destroyed.

The rationale of the Special Subcommittee on State Taxation of Interstate Commerce, in originally recommending the two-factor system was that this would result in easier administration of the tax laws. But many people feel the two-factor system is inequitable. Mr. HUTCHINSON, during Judiciary Committee hearings in the 89th Congress, proposed that the two-factor system be eliminated from any proposed legislation, and persuaded half of the committee to go along with him.

The difference between using a two- or a three-factor system can have sizable consequences. For example, the difference between corporate income taxes collected by the District of Columbia, using the two-factor system instead of the three-factor system, would be over 20 percent. New York State would lose $13 million in corporate tax revenues, if the two-factor system was used instead of the three-factor system. These figures come from the special subcommittee report itself. It appears that any State with large consumer interests will be adversely affected by H.R. 7906's use of the two-factor system. Both urban and rural States will be hurt by the two-factor system. For example, the difference to Montana between using the two- and three-factor system for collection of corporate income taxes would be 47 percent.

Why, then, did the Judiciary Committee adopt the two-factor formula? Why did it disregard the warning of Congressman HUTCHINSON, who stated, ". . . it was made abundantly clear the two-factor formula would have had drastic effects in shifting tax burdens. It would have had a violent effect on the tax base of many of the States and would also have created radical shifts in the liabilities of large numbers of companies."

The two-factor system was so obviously inequitable that the Judiciary Committee made it optional. Mr. HUTCHINSON stated that this was not enough. I agree. The two-factor system will damage States with large proportions of consumers. Former Governor Sawyer of Nevada, representing the Western States' Governors' Conference, asked for its deletion. Governor Sawyer, speaking during hearings on a predecessor to H.R. 2158 and H.R. 7906, said:

> Enactment of H.R. 11798 or similar legislation would have a profound impact on the revenues, revenue structures, and hence the economy of each of the several States represented in the Western States' Governors Conference.

So we see there are two basic deficiencies in the two-factor system. First, as Governor Sawyer, and the Special Subcommittee Report, pointed out, it cuts into State corporate income tax revenues. And second, it encourages diversity, instead of uniformity, of methods of corporate taxation. If a company is taxable by a State, it is subject to the three-factor system which all the States use. But if the same company does business in another State, but does not have a business location there, the two-factor system may then apply to it. Thus, with 7906 in effect, there is no uniformity. A company may have to pay two types of corporate income tax—one, under the State three-factor system; the other, under the Federal optional two-factor system. Without 7906, the three-factor formula is applied across-the-board by all the States. With 7906, the uniformity as to formula is destroyed. The Uniform Division Act, on the other hand, maintained this uniformity by adopting the three-factor system.

Having gone over what I consider to be the four major faults of the bill, we now come to the question, should this bill, even with its deficiencies, still be passed by the House? In deciding this question, we must remember that the issue of reform in the area of State taxation of interstate commerce, has already been preempted by the States themselves.

The real issue before us today is not reform of the tax laws. The real question is—now that significant State action has been taken, should Congress still proceed to pass its own law on the subject? The argument of those in favor of 7906 is, "yes—for the sake of uniformity." But we have seen that application of 7906's two-factor system will result in diversity, not uniformity.

Mr. Willis, in arguing last year for the passage of H.R. 2158, said:

> There are still a few diehard tax collectors against this bill. But who is for it? Business is for it.

California businessmen are not for it. The California Chamber of Commerce has taken a strong stand against H.R. 7906. The California manufacturers' association voted unanimously to oppose it, and I cannot believe that there are not businessmen in other States who feel the same way about this bill.

What does this bill give us then? Behind a facade of uniformity in application of tax laws, it works to the detri-

ment of local businessmen everywhere. It deprives State governments of needed revenue. Business leaders in California have studied the bill, and are against it. The executive department of the State has studied the bill, and is against it. But we were told last year, that the only people opposing this legislation were a few "diehard tax collectors."

I have saved what I consider to be the most serious objection to this bill for last. How will 7906 affect State collection of revenues? What impact will 7906 have in a period of our history when we are asking States to carry more and more of the burden of providing needed governmental services? How will 7906 affect the revenues available to the States for this purpose?

I have looked over the report issued by the Judiciary Committee, accompanying H.R. 7906. A list printed in the back of this report shows that the States would not suffer a revenue loss by passage of this bill. For example, the report tells us that the loss of corporate income tax in California, would be "insignificant." The loss of revenue to California from sales and use taxes is listed as only .07 of 1 percent. That is some $4 million right there. And that is not even considering the argument of tax authorities in California that the Judiciary Committee estimate of tax revenue loss is only one-fourth of the probable figure. So the loss of revenue, for this one State alone, will run anywhere from $4 to $16 million.

But, for the sake of argument, let us take the Judiciary Committee's low estimate of $4 million loss of tax revenue. The Judiciary Committee considers that $4 million is insignificant. I am not aware of any State government that would look upon the loss of $4 million of tax revenue as insignificant.

I can think of many ways that a State could put the sum of $4 million to good use. It could be used to finance a new project for educationally handicapped children. Local communities could use their portion of the revenues obtained from sales and use taxes, to increase pension benefits of firemen and policemen.

I do not depreciate the immense contributions of Chairman CELLER, of the past and present subchairmen of the Special Subcommittee on State Taxation of Interstate Commerce, Mr. Willis and my distinguished colleague, Mr. RODINO, or of the late chairman of the Senate Finance Committee, Senator Byrd, all of whom took a part in the process that has led to the introduction of this bill. I believe that their goals have already been largely realized through the development of State-initiated tax reforms in the field of interstate corporation taxation. We ought now to give the States the opportunity to finish the job they have undertaken—before we endeavor to step in and finish the job for them.

Mr. SCHWENGEL. Mr. Chairman, I join today in urging support for H.R. 7906, the Interstate Taxation Act. Having served in the Iowa Legislature for 10 years and now here in the Congress for 13 years, I am well aware of the problems business has encountered in the interstate tax area.

The tax laws of the respective States are voluminous. It is almost impossible for relatively small businessmen operating across State lines to do just the paperwork required by the various State laws.

As one who believes strongly in the importance of what I call the fifth great freedom, the freedom of movement, of men and goods, I feel this legislation is important and should be passed.

The bill before us was not hastily drawn, but came after years of study. It gives Congress the opportunity to provide uniform standards to be observed by the States in levying taxes on income derived from within the State from the conduct of business activity which is exclusively interstate in nature. The situation todays works a real hardship.

At the present time the average businessman is faced with a costly and bewildering maze of different laws and regulations in each State in which he does business. At present the various State tax laws covering interstate commerce are so diverse and so complex as to create widespread inequities. This complexity leads to confusion for auditors and administrators as well as taxpayers.

The defects are not limited to a particular form of tax or to particular States. Jurisdictional statements are often unclear, and guidelines for determining the amount of the tax due are vague or ambiguous. Inevitable byproducts are the widespread rejection of all tax obligations in States where companies have no business locations and inaccuracy in tax computations where reporting does occur.

This bill, H.R. 7906, will do a great deal to rectify a bad and unfair situation. Businessmen throughout the Nation will welcome a general solution which substitutes order and realism for the presently existing uncertainty and confusion. It will provide the certainty, uniformity, evenhandedness, and simplicity which businessmen everywhere need. Interstate companies will be relieved of the red tape and uncertainties now incident to their tax payments, and will be assured that their competitors are paying their fair share. At the same time administration will be greatly aided by adoption of a set of rules that will assure a far higher level of compliance than now exists. It will enable every businessman, wherever he may have his home base of operations, to determine without difficulty the tax liability he will incur in each State in which he sells his wares.

Companies doing interstate business will be relieved of the likelihood of overtaxation. Uniform rules for the assignment of the tax base will protect the seller in interstate commerce from multiple taxation.

Most small businesses will have the decided advantage of having the prospect of having to pay business taxes only in the single State where they have an actual business location, even though their sales may be made in other States. In the case where small businesses do have business locations in one or more other States, the uniform and simplified report requirements called for in this bill will make possible far more accurate compliance with the taxes of those States from records which are easily maintained.

As an aid to a better understanding let us look at how various kinds of businesses and businessmen would be more specifically affected by H.R. 7906. Manufacturers would have most of their tax liability limited to their own home State. Wherever feasible, the out-of-State manufacturer would be relieved of liability to collect a tax on sales of wholesalers or other middlemen. The interstate wholesaler who has an office and a warehouse in one State and supplies customers in adjoining States will be relieved of income and capital stock taxes levied by States other than his home State. Similarly as to retail sales taxes, business making all sales at wholesale will generally be freed of all out-of-State liability if they obtain registration numbers from their customers. Finally, the retailer with stores in a number of States will find his compliance work significantly simplified. Mail-order retailers will not be required to collect taxes outside their "home State."

Let me assure those who fear that their own States might be in danger of losing revenues by this measure that available evidence does not bear out any justification for this fear. No tax is recommended for imposition or repeal. No change in any State tax rate is required. No businesses have been freed from State taxation. No businesses would be exposed to harmful tax-free competition from outside the State. And, perhaps most significant of all, the loss in revenue theoretically available from out-of-State companies will in almost all cases approximately be offset by a gain in revenue from companies located in the taxing State. The measure will work a change in taxpayers among the States, but the net effect of this exchange of revenue will be small.

Thus the simplification and more orderly collection procedures for taxation of interstate commerce will be, in the first instance, of great benefit to small businesses everywhere, but will also represent a great step forward in more equitable and more efficient collection of State and local taxes.

The arguments here presented along with the testimony and the excellent debate so far on the House floor dictates the immediate passage of this legislation and so I urge its favorable consideration by every Member of the House.

Mr. CORMAN. Mr. Chairman, I was pleased that the House last year took favorable action on the Interstate Taxation Act, and regretted that there was not sufficient time after House action to permit the Senate to consider the measure so that final enactment could have resulted.

As a former member of the special subcommittee of the Judiciary Committee that wrote this legislation in the past two Congresses, and having introduced the bill again during this Congress, I strongly urge my colleagues to approve the measure today so that it can go to the Senate in ample time to be considered this year.

The genesis of this legislation was the Supreme Court ruling in a series of 1959 cases dealing with State powers to tax

interstate commerce. The Court ruled that a State could tax that portion of an out-of-State company's income earned within its borders.

The first legislation in 1959 that concerned itself with the complexities of State taxation of interstate commerce was Public Law 272, in the 86th Congress, which only provided relief to the businessman under a very special condition, but also authorized a thorough study of the entire matter. From that time, until today's debate, the House Judiciary Committee has made comprehensive studies of the subject, introduced measures, held extensive hearings, amended and reported a number of bills—and today, I believe, we have before us the best result that all previous deliberations could produce.

Mr. Chairman, I shall not go into the technical aspects of the bill, but I would like to remind the House that for quite a number of years the conduct of the Nation's business has been seriously hampered because of the multiplicity of varied State and local tax laws. The vast proliferation of State taxation programs has caused tremendous difficulties in conducting interstate business, particularly in what we term small businesses.

Our modern society has placed increasing demands on State and local governments, and taxes on the State and local levels have had to be increased to meet the demands for new revenue. New tax programs have been established, and this has led to the present difficult situation, to which this legislation responds.

The problem in collecting and reporting taxes on sales in each State in which business is carried on has become an insurmountable one to the businessman. The burden of compliance often exceeds the amount of the tax that must be paid.

The provisions of the legislation will set guidelines to allow interstate business to pay its own share of State and local taxes, while assuring the businessman that he is not being taxed unfairly and that the cost to him of complicated bookkeeping and compliance with conflicting taxing procedures will no longer be a burden to him.

Enactment of the legislation will ease this burden for the businessman within a very short time,, and it is imperative that he be given this sorely needed relief.

The committee's study also has revealed another positive result if the legislation is enacted. In the long run, the proposal will reflect itself in an overall increase in States' revenue—for two reasons: first, economic growth would be stimulated by the removal of trade barriers; second, it would be easier to enforce and gain compliance with tax laws.

Mr. Chairman, the committee report on the 90th Congress legislation stated:

> Students of America's history have been unanimous in reminding us that our economy, which is the wonder and envy of the world, owes its success largely to one of our oldest and most cherished principles—the principle that our national market is common to all of our States and open to all of our citizens.

The bill before the House today reaffirms this principle and its provisions will preserve it.

I urge the House to give the Interstate Taxation Act its complete support again this year, as it did last year, and to again vote favorably on this much-needed legislation.

Mr. SKUBITZ. Mr. Chairman, I have received a wire signed by the members of The Kansas Joint Legislative Committee on Taxes urging me to vote against this bill.

Now, the committee report indicates that the loss of taxes to Kansas would be minimal. In fact, the committee staff tells me that the loss on corporate income tax would be less than .02 percent. That the loss of sales tax would be less than .80 percent. Dollarwise, I am told it would amount to less than $200,000. This is far out of line with the State estimate of $15,000,000.

This afternoon, I called State department of revenue. I was told that the immediate loss would be $7,000,000 and the potential loss could reach $15,000,000. I was also told that one corporation doing business in Kansas could under the provisions of this act escape payment of $257,000 in taxes. Because of the confusion that exists, I shall vote against this measure.

Mr. PHILBIN. Mr. Chairman, this bill, H.R. 7906, which is designed to prohibit the double taxation of personal income, was passed by the House last May by a vote of 284 to 89.

However, the bill was not reached during the session by the other body and did not pass, hence it is before us once again for our second consideration.

In the broad sense, the purpose of the bill is to preserve, reaffirm, and revitalize the basic principle of free competition provided by the commerce clause of the Constitution to insure free access to every market in the Nation by every farmer and craftsman, and others who are in business.

The basic concept of this principle is that the individual States would not impose customs, duties, or regulations which would exclude the free and ready flow of traffic from one State to another in all parts of the Union.

With the growth of the country, and particularly with the new tax techniques adopted by the several States, some serious problems have developed which could threaten the freedom of commerce that we have always enjoyed in this country. This bill aims to lay down procedural guidelines on permitting State and local governments to pursue their tax policies with respect to interstate companies in a manner consistent with the realities of a multistate or nationwide business.

The fears of those who may see in this measure some uncalled-for interference with the free flow of trade business are unfounded, and I believe that the bill will work out favorably and clarify the question as to what is interstate commerce and what is strictly intrastate commerce.

Obviously, it is important to protect legitimate American businesses which are being subjected to increasing kinds of diverse, conflicting, and overlapping tax laws and regulatory practices which are often beyond their capabilities to handle, and are, moreover, in the nature of harassment and discrimination.

Various tax administrators and some members of the business community have furnished valuable information to the House committee, and their suggestions were embodied in amendments which were approved by the committee during the 90th Congress.

Thus, the definition of business location requires proof of regular maintenance of a stock of tangible personal property in the State for sale in the ordinary course of business.

There is also provision for tax incentives to attract industry into a State, and to implement water or air pollution abatement.

I do not believe that the doubts and fears expressed by some of the opponents of the bill are tenable. I am of the opinion that this bill will be a proper, effective vehicle to clarify existing laws governing interstate commerce, and to furnish helpful guidelines for business, large and small, and ordinary citizens to follow, when they are engaged in interstate business.

I commend the able committee for its hard work and its good judgment in bringing this bill before the House. I believe it will be approved by a large vote, as I think it deserves to be, because it will bring the light of reason, law, and clarification in some areas where they are urgently needed.

Mr. BUCHANAN. Mr. Chairman, I am testifying for the second time on behalf of the Interstate Taxation Act, which although approved by the House last year failed of passage in the Senate. My strong support for this measure comes from a conviction that the present chaotic system of a multiplicity of tax laws administered by the 50 States and thousands of local jurisdictions, imposes a serious impediment to the free flow of commerce among all the States. This free flow of interstate commerce is essential to our Nation's continued economic progress but is, in my judgment, greatly dependent upon some sort of national guidelines which would allow interstate businesses to pay a fair share of State and local taxes without being subjected to multiple and unfair taxation or unreasonable compliance burdens.

H.R. 7906 would provide these much-needed guidelines, as well as a degree of assurance for interstate businesses as to what their legal obligations are. I think it should be noted that this legislation is the result of over 6 years of comprehensive study of interstate tax problems by the Subcommittee on State Taxation of Interstate Commerce. The Congress provided the mandate for this study with the passage of Public Law 86–272. The core of that study is found in title I of H.R. 7906, which establishes uniform jurisdictional standards for each of the four types of taxes covered by the bill: corporate net income taxes, capital stock taxes, sales and use taxes, and gross receipt taxes. Basically, these standards prohibits a company from being subject to the jurisdiction of any State in which it does not maintain a "business location"; that is, the owning or leasing of real estate, having one or more employees located in the State, or regularly maintaining a stock of tangible

personal property for sale in the ordinary course of business.

I strongly request, therefore, that the House pass this meritorious legislation. At the same time, however, I would like to state my strong conviction that H.R. 7906 does not go far enough in that the transportation industry in general and the moving industry in particular—as represented by the irregular common carriers—are not covered under the bill with respect to ad valorem taxes imposed by some of the States. A clear need has, in my judgment, been established for the inclusion of this industry under the provisions of the Interstate Taxation Act.

The very nature of an interstate household mover's business is to make itself available to move anyone anywhere at anytime. The mover's service is a call-and-demand service, on irregular routes and over extensive distances. It is, furthermore, a business subject to wide fluctuations in volume during the various months of the year. It is estimated that some 12 million families are being moved yearly by this industry, with 60 to 70 percent of such moves occurring during the summer months.

In order to provide their essential service, movers must take great risks and are necessarily subject to a multiplicity of State and local tax requirements. The mover's inability to know at any time the extent of his tax liability is a great burden to him individually and to the industry collectively. In the vast and intricate body of State tax laws, changes are always in process. As a result, the mover can never know from day to day what the latest requirements may be of all the taxing jurisdictions.

One of my constituents was assessed by a neighboring State for more than $2,000 in ad valorem taxes within a year. Yet, this mover had no terminal or property within the particular State. He was, in effect, a victim of double taxation since he was already paying ad valorem taxes in Alabama. Since he was not a resident of the other State and owned no tangible or intangible property there, he was a victim of taxation without representation.

My constituent, as well as countless others like him, has had vehicles and shipments detained drivers arrested and fined, although there was no intention to violate the law—only human inability to keep up with the law. The very complexity of the system invites harassment and abuse. Audits made years after a particular tax year may result in large penalties as the outgrowth of a good-faith dispute over uncertain procedures of one of a multitude of taxing bodies.

It is my sincere opinion that movers are not trying to escape taxation. There is simply a clear need for a rational system of taxation which will prevent double and multiple taxation currently experienced by many interstate movers. Without such rules, the inequities, the uncertainties, and the complexities which now exist will continue to multiply with the result that the net revenue from these taxes will decrease, while the cost of compliance increases.

Because, in my judgment, relief for the interstate movers is clearly in order if the future of such an important industry is to be made secure, I have already conveyed the above sentiments to the disguished sponsor of H.R. 7906, Hon. PETER RODINO, who is also Chairman of the Judiciary Committee's Special Subcommittee on State Taxation of Interstate Commerce. I am certainly pleased that his response indicates both an awareness of the need for a solution to this problem and an intention to consider it pursuant to title IV of H.R. 7906. It is certainly my hope that relief will be granted to interstate movers and I invite the Senate in its consideration of H.R. 7906 to consider the abuse of this important segment of our economy.

At this point I include in the RECORD a copy of Mr. RODINO's letter on this subject:

HOUSE OF REPRESENTATIVES,
Washington, D.C., June 20, 1969.

Hon. JOHN BUCHANAN,
House of Representatives,
Washington, D.C.

DEAR JOHN: I have your letter of June 18, 1969, concerning my bill, H.R. 7906, the proposed Interstate Taxation Act.

I share your view that the complex problems currently faced by the household moving industry require some equitable and reasonable solution.

Although corporations engaged in the moving of household goods are treated as excluded corporations under H.R. 7906, the need for relief of this industry is, in my opinion, already clear. As a result, it would seem to me that the problems faced by the moving industry ought to eventually be given consideration under Title IV of my bill, which provides for continued Congressional oversight over those problems left unresolved by the other titles of the bill.

With respect to this matter, the Committee report which accompanied H.R. 7906 states specifically on page 4 that during the course of the study conducted by our subcommittee, "data was accumulated that led the subcommittee to conclude that 'in some excluded areas the need for uniform rules is already clear' (report, p. 1164), and during the course of the hearings testimony confirmed this conclusion at least with respect to the household moving industry and also substantiated the need for further evaluation by Congress of the progress being made by the States in those problem areas not covered by the bill."

I very much appreciate the warm support that you have given to my proposal and want to assure you that I shall continue to exert every effort to bring about the prompt enactment of this sorely needed measure.

Sincerely,

PETER W. RODINO, Jr.,
Chairman, Special Subcommittee on State Taxation of Interstate Commerce.

The CHAIRMAN. All time has expired.

The Clerk will read.

The Clerk read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Interstate Taxation Act."

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TITLE I—JURISDICTION TO TAX

SEC. 101. UNIFORM JURISDICTIONAL STANDARD.

No State or political subdivision thereof shall have power—

(1) to impose a net income tax or capital stock tax on a corporation other than an excluded corporation unless the corporation has a business location in the State during the taxable year;

(2) to require a person to collect a sales or use tax with respect to a sale of tangible personal property unless the person has a business location in the State or regularly makes household deliveries in the State; or

(3) to impose a gross receipts tax with respect to a sale of tangible personal property unless the seller has a business location in the State.

A State or political subdivision shall have power to impose a corporate net income tax or capital stock tax, or a gross receipts tax with respect to a sale of tangible personal property, or to require seller collection of a sales or use tax with respect to a sale of tangible personal property, if it is not denied power to do so under the preceding sentence.

TITLE II—MAXIMUM PERCENTAGE OF INCOME OR CAPITAL ATTRIBUTABLE TO TAXING JURISDICTION

SEC. 201. OPTIONAL TWO-FACTOR FORMULA.

A State or a political subdivision thereof may not impose on a corporation with a business location in more than one State, other than an excluded corporation, a net income tax (or capital stock tax) measured by an amount of net income (or capital) in excess of the amount determined by multiplying the corporation's base by an apportionment frac-

tion which is the average of the corporation's property factor and the corporation's payroll factor for the State for the taxable year. For this purpose the base to which the apportionment fraction is applied shall be the corporation's entire taxable income as determined under State law for that taxable year (or its entire capital as determined under State law for the valuation date at or after the close of that taxable year).

SEC. 202. PROPERTY FACTOR.

(a) IN GENERAL.—A corporation's property factor for any State is a fraction, the numerator of which is the average value of the corporation's property located in that State and the denominator of which is the average value of all of the corporation's property located in any State.

(b) PROPERTY INCLUDED.—The corporation's property factor shall include all the real and tangible personal property which is owned by or leased to the corporation during the taxable year, except —

(1) property which has been permanently retired from use, and

(2) tangible personal property rented out by the corporation to another person for a term of one year or more.

(c) EXCLUSION OF PERSONALITY FROM DENOMINATOR.—The denominator of the corporation's property factor for all States and political subdivisions shall not include the value of any property located in a State in which the corporation has no business location.

(d) STANDARDS FOR VALUING PROPERTY IN PROPERTY FACTOR.—

(1) OWNED PROPERTY.—Property owned by the corporation shall be valued at its original cost.

(2) LEASED PROPERTY.—Property leased to the corporation shall be valued at eight times the gross rents payable by the corporation during the taxable year without any deduction for amounts received by the corporation from subrentals.

(e) AVERAGING OF PROPERTY VALUES.—The average value of the corporation's property shall be determined by averaging values at the beginning and ending of the taxable year; except that values shall be averaged on a semi-annual, quarterly, or monthly basis if reasonably required to reflect properly the location of the corporation's property during the taxable year.

SEC. 203. PAYROLL FACTOR.

(a) IN GENERAL.—A corporation's payroll factor for any State is a fraction, the numerator of which is the amount of wages paid by the corporation to employees located in that State and the denominator of which is the total amount of wages paid by the corporation to all employees located in any State.

(b) PAYROLL INCLUDED.—The corporation's payroll factor shall include all wages paid by the corporation during the taxable year to its employees, except that there shall be excluded from the factor any amount of wages paid to a retired employee.

(c) EMPLOYEES NOT LOCATED IN ANY STATE.—If an employee is not located in any State, the wages paid to that employee shall not be included in either the numerator or the denominator of the corporation's payroll factor for any State or political subdivision.

(d) DEFINITION OF WAGES.—The term "wages" means wages as defined for purposes of Federal income tax withholding in section 3401(a) of the Internal Revenue Code of 1954, but without regard to paragraph (2) thereof.

SEC. 204. ZERO DENOMINATORS.

If the denominator of either the property factor or the payroll factor is zero, then the other factor shall be used as the apportionment fraction for each State and political subdivision. If the denominators of both the property factor and the payroll factor are zero, then the apportionment fraction for the State where the corporation has its business location shall be 100 percent.

SEC. 205. CAPITAL ACCOUNT TAXES ON DOMESTIC CORPORATIONS.

The State in which a corporation is incorporated may impose a capital account tax on that corporation without division of capital, notwithstanding the jurisdictional standard and limitation on attribution otherwise imposed by this Act.

SEC. 206. LOCAL TAXES.

The maximum percentage of net income (or capital) of a corporation attributable to a political subdivision for tax purposes shall be determined under this title in the same manner as though the political subdivision were a State; except that the denominators of the corporation's property factor and payroll factor shall be the denominators applicable to all States and political subdivisions. For this purpose the numerators of the corporation's property factor and payroll factor shall be determined by treating every reference to location in a State, except the references in sections 202(c) and 203(c), as a reference to location in the political subdivision.

TITLE III—SALES AND USE TAXES

SEC. 301. REDUCTION OF MULTIPLE TAXATION.

(a) LOCATION OF SALES.—A State or political subdivision thereof may impose a sales tax or require a seller to collect a sales or use tax with respect to an interstate sale of tangible personal property only if the destination of the sale is—

(1) in that State, or

(2) in a State or political subdivision for which the tax is required to be collected.

(b) IMPOSITION OF USE TAX.—A State or political subdivision thereof may not impose a use tax with respect to tangible personal property of a person without a business location in the State or an individual without a dwelling place in the State; but nothing in this subsection shall effect the power of a State or political subdivision to impose a use tax if the destination of the sale is in the State and the seller has a business location in the State or regularly makes household deliveries in the State.

(c) CREDIT FOR PRIOR TAXES.—The amount of any use tax imposed with respect to tangible personal property shall be reduced by the amount of any sales or use tax previously paid by the taxpayer with respect to the property on account of liability to another State or political subdivision thereof.

(d) REFUND.—A person who pays a use tax imposed with respect to tangible personal property shall be entitled to a refund from the State or political subdivision thereof imposing the tax, up to the amount of the tax so paid, for any sales or use tax subsequently paid to the seller with respect to the property on account of liability to another State or political subdivision thereof.

(e) MOTOR VEHICLES AND MOTOR FUELS.—

(1) VEHICLES.—Nothing in subsection (a) or (b) shall affect the power of a State or political subdivision thereof to impose or require the collection of a sales or use tax with respect to motor vehicles that are registered in the State.

(2) FUELS.—Nothing in this section shall affect the power of a State or political subdivision thereof to impose or require the collection of a sales or use tax with respect to motor fuels consumed in the State.

SEC. 302. EXEMPTION FOR HOUSEHOLD GOODS, INCLUDING MOTOR VEHICLES IN THE CASE OF PERSONS WHO ESTABLISH RESIDENCE.

No State or political subdivision thereof may impose a sales tax, use tax, or other nonrecurring tax measured by cost or value with respect to household goods, including motor vehicles, brought into the State by a person who establishes residence in that State if the goods were acquired by that person thirty days or more before he establishes such residence.

SEC. 303. TREATMENT OF FREIGHT CHARGES WITH RESPECT TO INTERSTATE SALES.

Where the freight charges or other charges for transporting tangible personal property to the purchaser incidental to an interstate sale are not included in the price but are separately stated by the seller, no State or political subdivision may include such charges in the measure of a sales or use tax imposed with respect to the sale or use of the property.

SEC. 304. LIABILITY OF SELLERS ON SALES TO BUSINESS BUYERS.

No seller shall be liable for the collection or payment of a sales or use tax with respect to an interstate sale of tangible personal property if the purchaser of such property furnishes or has furnished to the seller—

(1) a registration number or other form of identification indicating that the purchaser is registered with the jurisdiction imposing the tax to collect or pay a sales or use tax imposed by that jurisdiction, or

(2) a certificate or other written form of evidence indicating the basis for exemption or the reason the seller is not required to pay or collect the tax.

SEC. 305. LOCAL SALES TAXES.

No seller shall be required by a State or political subdivision thereof to classify interstate sales for sales tax accounting purposes according to geographic areas of the State in any manner other than to account for interstate sales with destinations in political subdivisions in which the seller has a business location or regularly makes household deliveries. Where in all geographic areas of a State sales taxes are imposed at the same rate on the same transactions, are administered by the State, and are otherwise applied uniformly so that a seller is not required to classify interstate sales according to geographic areas of the State in any manner whatsoever, such sales taxes whether imposed by the State or by political subdivisions shall be treated as State taxes for purposes of this Act.

TITLE IV—EVALUATION OF STATE PROGRESS

SEC. 401. CONGRESSIONAL COMMITTEES.

The Committee on the Judiciary of the House of Representatives and the Committee on Finance of the United States Senate, acting separately or jointly, or both, or any duly authorized subcommittees thereof, shall for four years following the enactment of this Act evaluate the progress which the several States and their political subdivisions are making in resolving the problems arising from State taxation of interstate commerce and if, after four years from the enactment of this Act, the States and their political subdivisions have not made substantial progress in resolving any such problem, shall propose such measures as are determined to be in the national interest.

TITLE V—DEFINITIONS AND MISCELLANEOUS PROVISIONS

PART A—DEFINITIONS

SEC. 501. NET INCOME TAX.

A "net income tax" is a tax which is imposed on or measured by net income, including any tax which is imposed on or measured by an amount arrived at by deducting from gross income expenses one or more forms of which are not specifically and directly related to particular transactions.

SEC. 502. CAPITAL STOCK TAX; CAPITAL ACCOUNT TAX.

(a) CAPITAL STOCK TAX.—A "capital stock tax" is any tax measured in any way by the capital of a corporation considered in its entirety.

(b) CAPITAL ACCOUNT TAX.—A "capital ac-

count tax" is any capital stock tax measured by number of shares, par or nominal values of shares, paid-in capital, or the like, not including any tax the measure of which includes any element of earned surplus.

A "sales tax" is any tax imposed with respect to retail sales, and measured by the sales price of goods or services sold, which is required by State law to be stated separately from the sales price by the seller, or which is customarily stated separately from the sales price.

SEC. 504. USE TAX.

A "use tax" is any nonrecurring tax, other than a sales tax, which is imposed on or with respect to the exercise or enjoyment of any right or power over tangible personal property incident to the ownership of that property or the leasing of that property from another, including any consumption, keeping, retention, or other use of tangible personal property.

SEC. 505. GROSS RECEIPTS TAX.

A "gross receipts tax" is any tax, other than a sales tax, which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which no deduction is allowed which would constitute the tax a net income tax.

SEC. 506. EXCLUDED CORPORATION.

(a) IN GENERAL.—An "excluded corporation" is any corporation—

(1) more than 50 percent of the ordinary gross income of which for the taxable year—

(A) is derived from regularly carrying on any one or more of the following business activities:

(i) the transportation for hire of property or passengers, including the rendering by the transporter of services incidental to such transportation;

(ii) the furnishing of—

(I) telephone service or public telegraph service, or

(II) other communications service if the corporation is substantially engaged in furnishing a service described in subdivision (I);

(iii) the sale of electrical energy, gas, or water;

(iv) the issuing of insurance or annuity contracts or reinsurance; or

(v) banking, the lending of money, or the extending of credit;

(B) is received in the form of one or more of the following:

(i) dividends;

(ii) interest; or

(iii) royalties from patents, copyrights, trademarks, or other intangible property and mineral, oil, or gas royalties (but not payments of the type described in section 543 (a) (5) (B) of the Internal Revenue Code of 1954); or

(C) consists of ordinary gross income described in subparagraph (A) and other ordinary gross income described in subparagraph (B);

(2) which is a "personal holding company" as defined in section 542 of the Internal Revenue Code of 1954 or a "foreign personal holding company" as defined in section 552 of such Code; or

(3) which has an average annual income in excess of $1,000,000.

(b) ORDINARY GROSS INCOME.—The term "ordinary gross income" means gross income as determined for the taxable year under the applicable provisions of the Internal Revenue Code of 1954, except that there shall be excluded therefrom—

(1) all gains and losses from the sale or other disposition of capital assets, and

(2) all gains and losses from the sale or other disposition of property of a character described in section 1231(b) of the Internal Revenue Code of 1954 (determined without regard to holding period).

(c) AVERAGE ANNUAL INCOME.—A corporation's "average annual income" with respect to any taxable year (in this subsection referred to as the "computation year") shall be determined as follows:

(1) The period to be used in making the determination (in this subsection referred to as the "averaging period") shall first be established. Such period shall consist of the 5 consecutive taxable years ending with the close of the computation year; except that if the corporation was not required to file a Federal income tax return for 5 consecutive taxable years ending with the close of the computation year, its averaging period shall consist of the 1 or more consecutive taxable years, ending with the close of that year, for which it was required to file such a return.

(2) (A) The amount of the corporation's Federal taxable income for each of the taxable years in its averaging period shall then be determined. Such amount for any year shall be the corporation's taxable income for such year for purposes of the Internal Revenue Code of 1954 (determined without regard to any net operating loss carryback from a taxable year after the computation year), except as otherwise provided in subparagraphs (B) and (C).

(B) If for any portion of its averaging period the corporation's income was included in a consolidated return filed under the Internal Revenue Code of 1954, the corporation's Federal taxable income for that portion of such period shall be considered to be the total consolidated Federal taxable income included in such return (and the corporation's Federal taxable income for any portions of its averaging period to which this subparagraph does not apply shall be determined under the other provisions of this paragraph as though the corporation had no income for any portion of such period to which this subparagraph applies).

(C) If any taxable year in the corporation's averaging period is a period of less than 12 calendar months (and its taxable income for such year is not otherwise annualized for purposes of the Internal Revenue Code of 1954), the corporation's Federal taxable income for such taxable year shall be placed on an annual basis for purposes of this subsection by multiplying such income by 12 and dividing the result by the number of months in such year.

(3) The amounts determined under paragraph (2) for the taxable years in the corporation's averaging period shall be added together, and the total shall be divided by the number of such years. The resulting sum is the corporation's average annual income with respect to the computation year, unless paragraph (4) applies.

(4) (A) If the corporation is affiliated at any time during the computation year with one or more other corporations, its average annual income with respect to the computation year shall be the total of its own average annual income and the average annual income of each of the corporations with which it is so affiliated, as determined under paragraph (3) (with respect to such year) subject to subparagraph (B) of this paragraph.

(B) If two or more of the corporations to which subparagraph (A) applies with respect to any computation year included their income in the same consolidated return filed under the Internal Revenue Code of 1954 for any portion of the applicable averaging period, the total consolidated Federal taxable income included in such return shall be deemed to be their aggregate Federal taxable income for that portion of such period for purposes of subparagraph (A), and paragraph (2) (B) shall be disregarded to the extent that its application would result in a larger aggregate Federal taxable income.

(d) AFFILIATED CORPORATIONS.—For purposes of subsection (c), two or more corporations are "affiliated" if they are members of the same group comprised of one or more corporate members connected through stock ownership with a common owner, which may be either corporate or noncorporate, in the following manner:

(1) more than 50 percent of the voting stock of each member other than the common owner is owned directly by one or more of the other members; and

(2) more than 50 percent of the voting stock of at least one of the members other than the common owner is owned directly by the common owner.

The fact that a corporation is an "excluded corporation" shall not be taken into account in determining whether two or more other corporations are "affiliated".

SEC. 507. SALE; SALES PRICE

The terms "sale" and "sales price" shall be deemed to include leases and rental payments under leases.

SEC. 508. INTERSTATE SALE.

An "interstate sale" is a sale with either its origin or its destination in a State, but not both in the same State.

SEC. 509. ORIGIN.

The origin of a sale is—

(1) in the State or political subdivision in which the seller owns or leases premises at which the property was last located prior to delivery or shipment of the property by the seller to the purchaser or to a designee of the purchaser, or

(2) if the property was never located at premises owned or leased by the seller, in the State or political subdivision in which a business location of the seller is located and in or from which the sale was chiefly negotiated.

SEC. 510. DESTINATION.

The destination of a sale is in the State or political subdivision where the property is delivered or shipped to the purchaser, regardless of the f.o.b. point or other conditions of the sale.

SEC. 511. BUSINESS LOCATION.

(a) GENERAL RULE.—A person shall be considered to have a business location within a State only if that person—

(1) owns or leases real property within the State,

(2) has one or more employees located in the State, or

(3) regularly maintains a stock of tangible personal property in the State for sale in the ordinary course of its business.

For the purpose of paragraph (3), property which is on consignment in the hands of a consignee, and which is offered for sale by the consignee on his own account, shall not be considered as stock maintained by the consignor; and property which is in the hands of a purchaser under a sale or return arrangement shall not be considered as stock maintained by the seller.

(b) EXCEPTION.—If a corporation's only activities within a State consists of the maintenance of an office for gathering news the corporation shall not be considered to have a business location in that State for purposes of paragraph (1) of section 101, to own or lease real property within that State for purposes of section 202, or to have an employee located in the State for purposes of section 203.

(c) BUSINESS LOCATION IN SPECIAL CASES.—If a person does not own or lease real property within any State or have an employee located in any State or regularly maintain a stock of tangible personal property in any State for sale in the ordinary course of its business (or in a case described in the last sentence of section 204), that person shall be considered to have a business location only—

(1) in the State in which the principal place from which its trade or business is conducted is located, or

(2) if the principal place from which its trade or business is conducted is not located in any State, in the State of its legal domicile.

SEC. 512. LOCATION OF PROPERTY.

(a) GENERAL RULE.—Except as otherwise provided in this section, property shall be considered to be located in a State if it is physically present in that State.

(b) RENTED-OUT PERSONALTY.—Personal property which is rented out by a corporation to another person shall be considered to be located in a State if the last base of operations at or from which the property was delivered to a lessee is in that State. If there is no base of operations in any State at which the corporation regularly maintains property of the same general kind for rental purposes, such personal property shall not be considered to be located in any State.

(c) MOVING PROPERTY WHICH IS NOT RENTED OUT.—Personal property which is not rented out and which is characteristically moving property, such as motor vehicles, rolling stock, aircraft, vessels, mobile equipment, and the like, shall be considered to be located in a State if—

(1) the operation of the property is localized in that State, or

(2) the operation of the property is not localized in any State but the principal base of operations from which the property is regularly sent out is in that State.

If the operation of the property is not localized in any State and there is no principal base of operations in any State from which the property is regularly sent out, the property shall not be considered to be located in any State.

(b) MEANING OF TERMS.—

(1) LOCALIZATION OF OPERATION.—The operation of property shall be considered to be localized in a State if during the taxable year it is operated entirely within that State, or it is operated both within and without that State but the operation without the State is—

(A) occasional, or

(B) incidental to its use in the transportation of property or passengers from points within the State to other points within the State, or

(C) incidental to its use in the production, construction, or maintenance of other property located within the State.

(2) BASE OF OPERATIONS.—The term "base of operations", with respect to a corporation's rented-out property or moving property which is not rented out, means the premises at which any such property is regularly maintained by the corporation when—

(A) in the case of rented-out property, it is not in the possession of a lessee, or

(B) in the case of moving property which is not rented out, it is not in operation.

regardless of whether such premises are maintained by the corporation or by some other person; except that if the premises are maintained by an employee of the corporation primarily as a dwelling place they shall not be considered to constitute a base of operations.

SEC. 513. LOCATION OF EMPLOYEE.

(a) GENERAL RULE.—An employee shall be considered to be located in a State if—

(1) the employee's service is localized in that State, or

(2) the employee's service is not localized in any State but some of the service is performed in that State and the employee's base of operations is in that State.

(b) LOCALIZATION OF EMPLOYEE'S SERVICES.—Service of any employee shall be considered to be localized in a State if—

(1) the service is performed entirely within that State, or

(2) the service is performed both within and without that State, but the service performed without the State is incidental to service performed within the State.

(c) EMPLOYEE'S BASE OF OPERATIONS.—The term "base of operations," with respect to an employee, means a single place of business with a permanent location which is maintained by the employer and from which the employee regularly commences his activities and to which he regularly returns in order to perform the functions necessary to the exercise of his trade or profession.

(d) CONTINUATION OF MINIMUM JURISDICTIONAL STANDARD.—An employee shall not be considered to be located in a State if his only business activities within such State on behalf of his employer are either or both of the following:

(1) The solicitation of orders, for sales of tangible personal property, which are sent outside the State for approval or rejection and (if approved) are filled by shipment or delivery from a point outside the State.

(2) The solicitation of orders in the name of or for the benefit of a prospective customer of his employer, if orders by such customer to such employer to enable such customer to fill orders resulting from such solicitation are orders described in paragraph (1).

This subsection shall not apply with respect to business activities carried on by one or more employees within a State if the employer (without regard to those employees) has a business location in such State.

(e) EMPLOYEES OF CONTRACTORS AND EXTRACTORS.—If the employer is engaged in the performance of a contract for the construction of improvements on or to real property in the State or of a contract for the extraction of natural resources located in the State, an employee whose services in the State are related primarily to the performance of the contract shall be presumed to be located in the State. This subsection shall not apply with respect to services performed in installing or repairing tangible property which is the subject of interstate sale by the employer, if such installing or repairing is incidental to the sale.

(f) The term "employee" has the same meaning as it has for purposes of Federal income tax withholding under chapter 24 of the Internal Revenue Code of 1954.

SEC. 514. HOUSEHOLD DELIVERIES.

A seller makes household deliveries in a State or political subdivision if he delivers goods, otherwise than by mail or by a common carrier, to the dwelling places of his purchasers located in that State or subdivision.

SEC. 515. STATE.

The term "State" means the several States of the United States and the District of Columbia.

SEC. 516. STATE LAW.

References in this Act to "State law", "the laws of the State", and the like shall be deemed to include a State constitution, and to include the statutes and other legislative acts, judicial decisions, and administrative regulations and rulings of a State and of any political subdivision.

SEC. 517. TAXABLE YEAR.

A corporation's "taxable year" is the calendar year, fiscal year, or other period upon the basis of which its taxable income is computed for purposes of the Federal income tax.

SEC. 518. VALUATION DATE.

The "valuation date", with respect to a capital stock tax, is the date as of which capital is measured.

PART B—MISCELLANEOUS PROVISIONS

SEC. 521. PERMISSIBLE FRANCHISE TAXES.

The fact that a tax to which this Act applies is imposed by a State or political subdivision thereof in the form of a franchise, privilege, or license tax shall not prevent the imposition of the tax on a person engaged exclusively in interstate commerce within the State; but such a tax may be enforced against a person engaged exclusively in interstate commerce within the State solely as a revenue measure and not by ouster from the State or by criminal or other penalty for engaging in commerce within the State without permission from the State.

SEC. 522. PROHIBITION AGAINST GEOGRAPHICAL DISCRIMINATION.

(a) IN GENERAL.—No provision of State law shall make any person liable for a greater amount of sales or use tax with respect to tangible personal property, or gross receipts tax with respect to tangible personal property, by virtue of the location of any occurrence in a State outside the taxing State, than the amount of the tax for which such person would otherwise be liable if such occurrence were within the State (subject to section 523). For purposes of this subsection, the term "occurrence" includes incorporation, qualification to do business, and the making of a tax payment, and includes an activity of the taxpayer or of a person (including an agency of a State or local government) receiving payments from or making payments to the taxpayer.

(b) COMPUTATION OF TAX LIABILITY UNDER DISCRIMINATORY LAWS.—When any State law is in conflict with subsection (a), tax liability may be discharged in the manner which would be provided under State law if the occurrence in question were within the taxing State.

SEC. 523. APPLICABILITY OF ACT.

Nothing in section 101 or in any other provision of this Act shall be considered—

(1) to repeal Public Law 86–272 with respect to any person;

(2) to increase, decrease, or otherwise affect the power of any State or political subdivision to impose or assess a net income or capital stock tax with respect to an excluded corporation; or

(3) to give any State or political subdivision the power to impose a gross receipts tax with respect to a sale of tangible personal property if the seller would not be subject to the imposition of such a gross receipts tax without regard to the provisions of this Act.

SEC. 524. PROHIBITION AGAINST OUT-OF-STATE AUDIT CHARGES.

No charge may be imposed by a State or political subdivision thereof to cover any part of the cost of conducting outside that State an audit for a tax to which this Act applies, including a net income or capital stock tax imposed on an excluded corporation.

SEC. 525. LIABILITY WITH RESPECT TO UNASSESSED TAXES.

(a) PERIODS ENDING PRIOR TO ENACTMENT DATE.—No State or political subdivision thereof shall have the power, after the date of the enactment of this Act, to assess against any person for any period ending on or before such date in or for which that person became liable for the tax involved—

(1) a corporate net income tax, capital stock tax (other than a capital account tax imposed on corporations incorporated in the State), or gross receipts tax with respect to tangible personal property, if during such period that person did not have a business location in the State; or

(2) a sales or use tax with respect to tangible personal property, if during such period that person was not registered in the State for the purpose of collecting tax, had no business location in the State, and did not regularly make household deliveries in the State.

(b) CERTAIN PRIOR ASSESSMENTS AND COLLECTIONS.—The provisions of subsection (a) shall not be construed—

(1) to invalidate the collection of a tax prior to the time assessment became barred under subsection (a), or

(2) to prohibit the collection of a tax at or after the time assessment became barred under subsection (a), if the tax was assessed prior to such time.

SEC. 526. EFFECTIVE DATES.

(a) CORPORATE NET INCOME TAXES AND CAPITAL STOCK TAXES.—Title II of this Act, and the provisions of section 101 and this title (except section 525) insofar as they

relate to corporate net income taxes or capital stock taxes, shall apply in the case of corporate net income taxes only with respect to taxable years ending after the date of the enactment of this Act, and in the case of capital stock taxes only with respect to taxes for which the valuation date is later than the close of the first taxable year ending after the date of the enactment of this Act. Any corporation shall be permitted to adjust its reporting period for net income tax purposes to the extent necessary to comply with this Act, effective for the first taxable year to which title II applies.

(b) OTHER PROVISIONS.—The remaining provisions of this Act shall take effect on the date of the enactment of this Act.

Mr. RODINO (during the reading). Mr. Chairman, I ask unanimous consent that the bill be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

AMENDMENT OFFERED BY MR. SMITH OF IOWA

Mr. SMITH of Iowa. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. SMITH of Iowa: On page 12, after line 3, insert the following new title:

"TITLE V—TAXATION OF INDIVIDUALS

"SEC. 501. REDUCTION OF MULTIPLE TAXABILITY.

"(a) IN GENERAL.—No State or political subdivision thereof shall have the power to impose an income tax on the income or to establish the rate of taxation on the income of any individual—

"(1) which was earned or derived during any period while the individual was not domiciled in the State except to the extent the income was earned from sources within the State, or

"(2) which was earned or derived from sources without the State during any period while the individual was domiciled in the State except to the extent the tax exceeds any income tax paid on such income to the State (or political subdivision) in which the income was earned or derived.

"(b) DEFINITION.—As used in subsection (a), the term 'earned' means acquired by labor, service, or performance and does not include the mere receipt of interest or dividend payments which are merely a return upon an investment and are not paid as a result of labor, service, or performance rendered."

Mr. SMITH of Iowa (during the reading). Mr. Chairman, in view of the fact that this is the bill, H.R. 906, verbatim, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Without objection, it is so ordered.

There was no objection.

Mr. SMITH of Iowa. Mr. Chairman, as was mentioned during debate earlier, last year when this bill was before the House, I presented an amendment to the bill which was adopted overwhelmingly. It was amended on the floor and this bill is that amendment of last year, as amended, verbatim.

After this amendment is adopted, assuming it will be, I will offer another amendment to make it conform to the bill.

The purpose of the amendment is to prevent double taxation of individuals or multiple taxation of individuals, as far as income tax is concerned. The principal bill deals with corporations, and this amendment deals with individuals as far as the income tax is concerned. It leaves a preference to the domiciliary State to levy an income tax, but it permits another State to levy a tax to the extent that money is earned or derived from sources within that State. It also provides that the domiciliary State must give credit for the tax owed and paid on income in the other State.

In other words, it prevents double taxation.

Some State commissioners are claiming that by practice this is what they now do. Indeed, I think most of them do as a matter of practice, although many of them do not have to, and if they want to, they can gouge many taxpayers any time they really want to.

Mr. RIVERS. Mr. Chairman, will the gentleman yield?

Mr. SMITH of Iowa. I yield to the gentleman from South Carolina.

Mr. RIVERS. Does the gentleman's amendment deal with a Member of Congress living in Maryland, Virginia, and other places nearby? For example, two distinguished Members of this House were compelled to pay income tax in the State of Maryland. Would the amendment prevent that kind of disgraceful, small act on the part of any State toward a Member of Congress whom they know represents another State? They are taking away from people portions of their salary under the guise of their being domiciled in that State.

Mr. SMITH of Iowa. To the extent that they do not have income earned or derived from sources in those States, it would. I would say, however, to the gentleman, Congressmen are only a few of the 1 million people who find themselves in this position. I would be opposed to legislation that would single out Members of Congress for separate treatment.

Mr. RIVERS. I am speaking for Members of Congress. Members of Congress cannot talk back. I live in the State of Virginia, where they do not practice that sort of smallness. But they do in the State of Maryland.

Members of Congress have raised their voices. I think this is one of the smallest things I have seen in my 30 years in Congress.

Mr. SMITH of Iowa. What I was getting ready to say is that Virginia does not apply it to Members of Congress. Washington, D.C., by law, exempts Members of Congress. But other people do not always get that kind of treatment. What this will do is to apply the same treatment across the board to all people.

Mr. RIVERS. A man selects the domicile in which he desires to live.

Mr. SMITH of Iowa. Yes. We would not interrupt or change the definition of domicile. That is well defined in the law. If one can meet the requirements that are now in the law as to domicile, then that is the primary State for income tax purposes.

Mr. RIVERS. Would an employee of your office or an office of a Member of the other body receive the same treatment?

Mr. SMITH of Iowa. If he were domiciled in one of these States he would be liable for income tax there.

Mr. RIVERS. What about a Federal civil service employee?

Mr. SMITH of Iowa. The State in which he is domiciled has the preference on his tax.

Mr. RIVERS. Even though outside the city of Washington, if you had 100,000 civil service employees, they could elect another State?

Mr. SMITH of Iowa. No, I think domicile is pretty clearly defined in the law. In addition to selecting a State for the domicile, you have to have some other indications as to what in fact is one's domicile. They usually need a home there, to vote there, and do some other things.

Mr. RIVERS. It does not change the basic law of domicile.

Mr. SMITH of Iowa. No, it does not change the law of domicile.

I would also like to discuss briefly some examples: It involves people who move from one State to another during a year. This involves large numbers of people in the United States. They inevitably find in many cases that they end up owing a tax on their entire income in both States, the State from which they moved and the State to which they moved. Soldiers' wives are involved in that. Many of them will go to work near where their husbands are stationed. They find that because they have a place of abode in that State, in addition to the State where they are domiciled, both States can, if they want to, tax the entire income for the entire year.

The CHAIRMAN. The time of the gentleman has expired.

(By unanimous consent, Mr. SMITH of Iowa was allowed to proceed for 2 additional minutes.)

Mr. SMITH of Iowa. Airline pilots, businessmen, and others find themselves in that situation. A number of people have summer homes or they have winter homes. They may find that due to that fact, they may owe a tax in three States, if the tax commissioners were to enforce their laws.

I do not think it is necessary for an extended colloquy concerning the amendment. I think ultimately it will save the State tax system, because if we do not do something, people will become so disgusted, Congress may outlaw the State income tax entirely.

Mr. ASHBROOK. Mr. Chairman, will the gentleman yield?

Mr. SMITH of Iowa. I yield to the gentleman from Ohio.

Mr. ASHBROOK. Mr. Chairman, I congratulate the gentleman for his work. I would like to have him make one point crystal clear, and that is there is no attempt by this amendment to prevent any State from taxing any income an individual may have or earn in his own State. Is that correct?

Mr. SMITH of Iowa. That is correct. There is no tax shelter here at all. The domiciliary State has a preference on the income, and it can even tax any

income earned in another State if the other State did not levy a tax on it.

Mr. ASHBROOK. Is it not also correct if a person would be subject to tax in various States, for instance in Ohio and in Florida, under the gentleman's amendment the person can be taxed under both States? It does not remove from any State any power to tax a resident if he is or is not domiciled in that State.

Mr. SMITH of Iowa. To the extent he earned income from sources in that State.

Mr. ASHBROOK. That is correct. I thank the gentleman for making that clear.

Mr. RIVERS. Mr. Chairman, will the gentleman yield?

Mr. SMITH of Iowa. I yield to the gentleman from South Carolina.

Mr. RIVERS. Mr. Chairman, this is just an implementation, in other words, of the full faith and credit provision of the Constitution?

Mr. SMITH of Iowa. That would be a good way to put it.

Mr. KYL. Mr. Chairman, will the gentleman yield?

Mr. SMITH of Iowa. Mr. Chairman, I yield to the gentleman from Iowa (Mr. KYL).

Mr. KYL. Mr. Chairman, I thank the gentleman for bringing this to the floor. This is something which has to do with preventing the possibility of double taxation. I think this is a very constructive step.

Mr. HUNT. Mr. Chairman, I rise in support of the amendment to prohibit the taxation on an individual's income in its entirety in more than one State. In my estimation it is simple equity and many of the arguments advocating a uniform and equitable system of taxation among the several States for businesses and corporations, thus providing relief from the multiplicity of State and local taxes contributing to multiple taxation, apply equally to individuals in principle.

However, there is a situation involving taxes on the incomes of individuals which I feel has not been given the consideration it is due. This is the situation where an individual is domiciled in a State that does not levy an income tax and works in a State where either a State income tax is imposed or the political subdivisions of that State are empowered to levy such taxes based on income. I am personally familiar with the case of New Jersey, a State which does not have an income tax law, and Pennsylvania which, although it does not levy a State income tax, has authorized its political subdivisions to impose such taxes. The city of Philadelphia imposes a 2-percent wage tax on everyone who earns an income within its jurisdiction. This rate will increase to 3 percent effective July 1. The tax is levied at the full rate on residents, nonresidents, and out-of-State residents as well.

I believe, Mr. Chairman, we should look at an individual's tax liability in terms of an aggregate tax burden. For example, the total State and local tax burden in Pennsylvania averages $94.57 per $1,000 of personal income, roughly approximating the $92.83 State and local tax liability in New Jersey. A statistically representative New Jersey resident who works in Philadelphia and pays a 2-percent gross income tax—3 percent beginning July 1, 1969—however, would have $20 per $1,000 of personal income added to his total tax bill, assuming his personal income consists entirely of his wages or salary. Thus, he would pay $20 more tax per $1,000 of personal income than a comparably situated resident of New Jersey who works in New Jersey and $18.26 per $1,000 more than a resident of Pennsylvania who works in Pennsylvania.

With respect to taxation and benefits, I am fully cognizant of the fact the courts have consistently recognized that equal tax burdens do not necessarily require equal benefits. I do not infer from the attitude of the courts in this regard that it is a mandate to any taxing jurisdiction to gouge the helpless taxpayer, especially the nonresident who has no voice at the polls or representation in the disposition of his tax dollar. Rather, I believe the courts view this issue of taxes versus benefits as one to be resolved as fairly as practical by the political instruments of government. There exists no standard by which State and local taxing jurisdictions may apportion the tax burden between residents and nonresidents taking into consideration the relative benefits derived by each class. In this connection, I include the following table, entitled "Local Income Tax Bases, 1967," taken from an information report, M–43, of the Advisory Commission on Intergovernmental Relations, covering "State and Local Finances, Significant Features, 1966 to 1969":

TABLE 42.—LOCAL INCOME TAX BASES, 1967

City	Nonresident rate relative to resident rate	Business taxed [1]		Resident income base includes—				Reciprocal city tax credit allowed	Personal exemptions allowed	Personal deductions allowed	Tax withheld on wages and salaries
		Incorporated	Unincorporated	Wages, salaries, similar income only	Income earned out of jurisdiction	Capital gains	Dividends				
New York, N.Y.	[2]	Yes	Yes	No	Yes	Yes	Yes	No	$600 each [3]	Yes	Yes.
Philadelphia, Pa.	Same	No	Yes	Yes	Yes	No	No	No	No	No	Yes.
Detroit, Mich.	Half	Yes	Yes	No	Yes	Yes	Yes	Yes	$600 each	No	Yes.
Baltimore, Md.	Zero	Yes	Yes	No	Yes	Yes	Yes	No	$800 each	Yes	Yes.
Cleveland, Ohio	Same	Yes	Yes		Yes		No	Yes	No	No	Yes.
St. Louis, Mo.	do	Yes	Yes	Yes	Yes	No	No [3]	No	No	No	Yes.
Cincinnati, Ohio	do	No	Yes	Yes	Yes	No	No	Yes	No	No	Yes.
Pittsburgh, Pa.	do	Yes	Yes	No	No	No	No	Yes	No	No	Yes.
Kansas City, Mo.	do	Yes	Yes	Yes	Yes	No	No [3]	Yes	No	No	Yes.
Columbus, Ohio	do	Yes	Yes	No	Yes	No	No	Yes	No	No	Yes.
Louisville, Ky.	do	Yes	Yes	Yes	No	No [3]	No	No	No	No	Yes.
Toledo, Ohio	do	Yes	Yes	No	Yes	No	No	Yes	No	No	Yes.
Akron, Ohio	do	Yes	Yes	Yes	Yes	No	No	No	No	No	Yes.
Dayton, Ohio	do	Yes	Yes	Yes	Yes	No	No	Yes	No	No	Yes.
Flint, Mich.	Half	Yes	Yes	No	Yes	Yes	Yes	Yes	$600 each	No	Yes.
Youngstown, Ohio	Same	Yes	Yes	Yes	Yes	No	No	Yes	No	No	Yes.
Erie, Pa.	do	No	Yes	No	Yes	No	No	Yes	No	No	Yes.
Canton, Ohio	do	Yes	Yes	Yes	Yes	No	No	Yes	No	No	Yes.
Scranton, Pa.	do	No	Yes	Yes	Yes	No	No	No	No	No	Yes.
Allentown, Pa.	do	No	Yes	Yes	Yes	No	No	Yes	No	No	Yes.
Grand Rapids, Mich.	Half	Yes	Yes	No	Yes	Yes	Yes	Yes	$600 each	No	Yes.

[1] Charitable, religious, educational, and other nonprofit organizations exempt in most cases. Tax generally confined to income stemming from activities in city.

[2] Nonresidents taxed on an entirely different basis from residents. The rate is markedly lower. Instead of deductions, an exclusion related to income level is allowed. The exclusion of $3,000 on income up to $10,000 drops to $2,000 for income over $10,000, to $1,000 for $20,000 to $30,000 income, to none for income over $30,000.

[3] Except where derived in connection with the conduct of a business.

Source: Tax Foundation, Inc., "City Income Taxes," research publication No. 12 (new series)

The table compares city income taxes imposed on nonresidents with those on residents. You will note that while most cities, including Philadelphia, impose the same tax rate on both residents and nonresidents, other cities—New York, Baltimore, Detroit, Flint, and Grand Rapids—impose different rates. Three of these impose only half the resident rate on nonresidents.

Just as there exists a pressing need for the establishment of an equitable system for the taxation of interstate commerce, as embodied in the legislation now before us, I firmly believe there is an urgent need to create a national standard for the levying of taxes on the incomes of out-of-State residents as compared with residents. Insofar as the taxation of residents and nonresidents within the same State is concerned, I feel this is justifiably within the sole jurisdiction of the political instruments of the State governments. I cannot subscribe, however, to the argument that to set a national standard respecting income taxes on out-of-State residents is an undue limitation on the State taxing powers.

It is my feeling that a taxpayers' re-

volt is not only confined to our discussions of Federal taxes, but to State and local taxes as well. When President Nixon said:

We shall never make taxation popular, but we can make taxation fair.

He struck a note of optimism to which the American people appeal now for action. I believe it is the responsibility of the Congress to effect a fair and equitable system of taxation at all levels of government to the extent of its jurisdiction.

I favor the Smith of Iowa amendment and urge the Judiciary Committee to give serious consideration to the issue of State and local income taxes as they affect out-of-State residents to cover the situation described by my remarks. The tax credit provisions of the amendment will not benefit New Jersey residents and the residents of other States, where State or local income taxes are not imposed, who must pay out-of-State income taxes. The resulting inequitable and discriminatory aggregate tax burdens should be remedied by appropriate legislation.

Mr. CLEVELAND. Mr. Chairman, will the gentleman yield?

Mr. HUNT. I yield to the gentleman from New Hampshire.

Mr. CLEVELAND. Mr. Chairman. I thank the gentleman for yielding. I support the amendment offered by the gentleman from Iowa (Mr. SMITH) as I did last year. Last year, when we discussed this amendment on the floor of the House on May 22, I not only supported this amendment but offered a clarifying amendment to it. This year I am pleased that the gentleman's amendment includes that amendment, as I think it will strengthen the purpose of his endeavor. As the gentleman from South Carolina (Mr. RIVERS) has already pointed out, I feel that this measure is essentially a clarification of the constitutional mandate expressed in the full faith and credit clause, and I hope that the House will again vote to approve the amendment and the bill.

Mr. RODINO. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I would like to state that although I did not, in consultation with the gentleman from Iowa, accept the amendment as a committee amendment, nonetheless I supported the amendment the last time it was proposed and I support it now. I think it is a good amendment.

Mr. MACGREGOR. Mr. Chairman, I move to strike the last word.

Mr. Chairman, I have no objection to the amendment offered by the gentleman from Iowa (Mr. SMITH).

Mr. CEDERBERG. Mr. Speaker, I move to strike the last word.

(By unanimous consent, Mr. CEDERBERG was allowed to speak out of order.)

ANNUAL DINNER IN LONGWORTH BUILDING—ARRIVAL OF PRESIDENT

Mr. CEDERBERG. Mr. Speaker, I take this time just to make this announcement, that tonight is the night of the annual dinner for the House of Representatives in the Longworth Building. Of course all Members are invited. We hope they will be there.

The President is going to be our guest. He will be there at about 6:15. We hope as many Members as possible can be there at that time to greet the President when he arrives.

Mr. PELLY. Mr. Chairman, I move to strike out the last two words.

Mr. Chairman, I strongly support this amendment by the gentleman from Iowa (Mr. SMITH) because I believe it would correct a situation under which the State of Alaska recently imposed an income tax on many nonresidents who are domiciled in my State of Washington. These individuals who have no vote in Alaska, or have no benefits such as education of their children in Alaska schools are taxed because they sail on a ship that enters Alaska waters or are truck drivers and airline pilots and fishermen, who although nonresidents, must pay Alaska income taxes just because they must visit Alaska in their jobs.

Therefore, Mr. Chairman, I urge the House to support the Smith amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Iowa (Mr. SMITH).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. SMITH OF IOWA

Mr. SMITH of Iowa. Mr. Chairman, I offer a conforming amendment.

The Clerk read as follows:

Amendment Offered by Mr. SMITH of Iowa: On page 2, strike out all of the table of contents following the item which relates to section 401, and insert the following:

"TITLE V—TAXATION OF INDIVIDUALS

"Sec. 501. Reduction of multiple taxability.

"TITLE VI—DEFINITIONS AND MISCELLANEOUS PROVISIONS

"PART A. DEFINITIONS.

"Sec. 601. Net income tax.
"Sec. 602. Capital stock tax; capital account tax.
"Sec. 603. Sales tax.
"Sec. 604. Use tax.
"Sec. 605. Gross receipts tax.
"Sec. 606. Excluded corporation.
"Sec. 607. Sale; sales price.
"Sec. 608. Interstate sale.
"Sec. 609. Origin.
"Sec. 610. Destination.
"Sec. 611. Business location.
"Sec. 612. Location of property.
"Sec. 613. Location of employee.
"Sec. 614. Household deliveries.
"Sec. 615. State.
"Sec. 616. State law.
"Sec. 617. Taxable year.
"Sec. 618. Valuation date.

"PART B. MISCELLANEOUS PROVISIONS.

"Sec. 621. Permissible franchise taxes.
"Sec. 622. Prohibition against geographical discrimination.
"Sec. 623. Applicability of Act.
"Sec. 624. Prohibition against out-of-State audit charges.
"Sec. 625. Liability with respect to unassessed taxes.
"Sec. 626. Effective dates."

On page 12, line 4, strike out "TITLE V" and insert "TITLE VI".

On page 12, line 7, strike out "SEC. 501." and insert "SEC. 601."

On page 12, line 13, strike out "SEC 502." and insert "SEC. 602."

On page 12, line 22, strike out "SEC. 503." and insert "SEC. 603."

On page 13, line 3, strike out "SEC. 504." and insert "SEC. 604."

On page 13, line 11, strike out "SEC. 505." and insert "SEC. 605."

On page 13, line 17, strike out "SEC. 506." and insert "SEC. 606."

On page 19, line 9, strike out "SEC. 507." and insert "SEC. 607."

On page 19, line 12, strike out "SEC. 508." and insert "SEC. 608."

On page 19, line 15, strike out "SEC. 509." and insert "SEC. 609."

On page 20, line 3, strike out "SEC. 510." and insert "SEC. 610."

On page 20, line 8, strike out "SEC. 511." and insert "SEC. 611."

On page 21, line 18, strike out "SEC. 512." and insert "SEC. 612."

On page 23, line 22, strike out "SEC. 513." and insert "SEC. 613."

On page 26, line 3, strike out "SEC. 514." and insert "SEC. 614."

On page 26, line 8, strike out "SEC. 515." and insert "SEC. 615."

On page 26, line 11, strike out "SEC. 516." and insert "SEC. 616."

On page 26, line 17, strike out "SEC. 517." and insert "SEC. 617."

On page 26, line 22, strike out "SEC. 518." and insert "SEC. 618."

On page 27, line 2, strike out "SEC. 521." and insert "SEC. 621."

On page 27, line 13, strike out "SEC. 522." and insert "SEC. 622."

On page 27, line 22, strike out "523" and insert "623".

On page 28, line 8, strike out "SEC. 523." and insert "SEC. 623."

On page 29, line 1, strike out "SEC. 524." and insert "SEC. 624."

On page 29, line 8, strike out "SEC. 525." and insert "SEC. 625."

On page 29, line 21, strike out "or".

On page 30, line 5, strike out the period and insert "; or".

On page 30, after line 5, insert the following new paragraph:

"(3) an income tax on the income of any individual—

"(A) which was earned or derived while the individual was not domiciled in the State, except to the extent the income was earned from sources within the State, or

"(B) which was earned or derived from sources without the State while the individual was domiciled in the State, except to the extent the tax exceeds any income tax paid on such income to the State (or political subdivisions) in which the income was earned or derived."

On page 30, line 15, strike out "SEC. 526." and insert "SEC. 626."

On page 30, line 18, strike out "525" and insert "625".

On page 31, after line 3, insert the following new subsection:

"(b) TAXATION OF INDIVIDUALS.—Title V of this Act shall apply only with respect to taxable years ending after the date of the enactment of this Act."

On page 31, line 4, strike out "(b)" and insert "(c)".

Mr. SMITH of Iowa (during the reading). Mr. Chairman, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Iowa?

There was no objection.

Mr. SMITH of Iowa. Mr. Chairman, this is a conforming amendment that fits the previous amendment into the bill and renumbers the sections and makes it coincide as to scope and effective date.

I urge the adoption of the amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Iowa (Mr. SMITH).

The amendment was agreed to.

AMENDMENT OFFERED BY MR. HUNGATE

Mr. HUNGATE. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. HUNGATE: On page 15, line 9, strike out "$1,000,000" and insert in lieu thereof "$500,000".

Mr. HUNGATE. Mr. Chairman, this amendment relates to page 15, line 9, as indicated, and makes only one change in the bill. It would change the definition of an "excluded corporation" from one with an average annual income in excess of $1 million to one with an average annual income in excess of $500,000.

So far as I can ascertain, on the latest year for which I can get figures, the Commerce Department advises me there are some 5,700 corporations with net incomes exceeding $1 million, as of 1965.

The Internal Revenue Service says that there were 5,722 corporations with a net income of $1 million or more as of 1965. The figures I received on those between $500,000 average income and $1 million income show that it would add 5,037 corporations to the total. The excluded corporations are the ones over which your States will retain the powers that they now have to raise the revenue that they so desperately need. In essence this is the only change that my amendment would make. I would suggest that those who have an income of over $500,000 average per year might be something larger than most of us would think of as small business, which is what we are particularly anxious to help. In short, this amendment would change the number of corporations from some 5,700 which would be paying taxes to your States after the enactment of this measure and double it to something over 10,000.

Mr. Chairman, I urge the adoption of my amendment.

Mr. MACGREGOR. Mr. Chairman, I rise in opposition to the amendment.

First of all, let me say the amendment is presented to us here for the first time. It was not presented during the deliberations of the Committee on the Judiciary on this matter where it could have been accorded thoughtful study.

I yield to the gentleman from Missouri if I am in error.

Mr. HUNGATE. Will the gentleman yield whether he is in error or not?

Mr. MACGREGOR. I will yield if he says that what I said is inaccurate, and then I will be pleased to yield for whatever comment he wishes to make.

Mr. HUNGATE. Let me say that the facts that I base this on are accurate. But that does not mean anything. The point I want to make is: Was not the amendment which I just offered discussed in the Committee on the Judiciary?

Mr. MACGREGOR. We discussed at some length in the special Subcommittee on Interstate Taxation what dollar amount was an appropriate limitation.

Mr. Chairman, to conclude—perhaps I should say to continue, although I will be concluding very shortly—we are considering this matter for the first time and we do not know what its effect would be. I appreciate the fact that the gentleman from Missouri may be presenting this with accurate information, but I repeat that we do not know what its effect would be. The lowering of the amount of the limitation should be given careful committee consideration.

Second, I suggest to the gentleman that inflation being what it is in the last 4 years, $500,000 a few years ago is the same as $1 million today. I appreciate that the gentleman wishes in good faith to restrict the bill to small business, but there are many small businesses doing business with an annual volume of close to $1 million.

Mr. Chairman, I ask that the amendment be defeated.

If the gentleman is sincere—and I am sure he is—he will have an opportunity to argue the case before the other body.

Mr. RODINO. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I merely want to reiterate what the gentleman from Minnesota (Mr. MACGREGOR) stated; namely, that this amendment was never offered.

I would point out to the Committee that one of the most outstanding tax administrators, Mr. Cox of Georgia, when discussing this matter with the committee suggested that his was a likely compromise. The $1 million figure was one which was considered at great length. We know what the effect of a $1 million exclusion would be. We certainly do not know what the effect would be if it were reduced to $500,000.

I would also state to the gentleman from Missouri that with title IV in the bill, which gives us the opportunity to oversee what is being done in these taxing jurisdictions, the committee would have an opportunity to oversee this. Should problems arise in this area then under the provisions of title IV of this bill, we would be able to make adjustments.

For that reason I believe this amendment is not timely and I urge its defeat.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Missouri (Mr. HUNGATE).

The amendment was rejected.

AMENDMENT OFFERED BY MR. TAFT

Mr. TAFT. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. TAFT: On page 30, line 21, after the word "ending", add "two years"; and on line 24, delete "first" and substitute "third"; and on page 31, line 5, delete "on" and substitute "two years after".

Mr. TAFT. Mr. Chairman and members of the Committee, I shall not take but a minute to explain this very simple amendment. I do not expect it will be adopted, but I believe it is a reasonable and a sound and a precautionary amendment, and perhaps if the amendment is not adopted here it may give warning to the Senate of some of the problems that may arise if legislation of this sort is passed.

Mr. Chairman, the only effect of the amendment would be to delay the effective date of this measure, if passed, for a period of 2 years. I should point out to the Members that many legislatures in the States have biennial sessions, and a 2-year delay in putting it into effect would give them a chance to adjust their thinking insofar as any revenue changes are concerned, as in the case of the State of Washington, or also to adjust their tax laws should there be any change in their tax laws necessary to eliminate some very, very difficult questions that I believe would arise if we simply slap on the legislation as passed on top of their present State tax structure.

Mr. RODINO. Mr. Chairman, I rise in opposition to the amendment.

Mr. Chairman, I might say that this problem has been under discussion and under consideration for some 10 years now. It has become clear that there is a necessity to eliminate the chaos and confusion now, to relieve these companies which are unduly burdened by the various vexing questions relating to State taxation of interstate commerce.

Mr. Chairman, I believe that any unnecessary delay would unduly saddle them, and would be unjust and unfair.

For those reasons, I would urge the defeat of the amendment.

Mr. ICHORD. Mr. Chairman, will the gentleman yield?

Mr. RODINO. I yield to the gentleman from Missouri.

Mr. ICHORD. Mr. Chairman, I thank the gentleman for yielding.

This appears to me, I would say to the gentleman from New Jersey, to be a very reasonable amendment. If the summary in the report is wrong, and the figures of the Missouri revenue people are correct, they will lose $25 to $50 million. Does not the gentleman from New Jersey believe, if this is true, that we should give the States some opportunity to change or readjust their tax laws so that they can make up the $25 million or the $50 million loss? Because the Federal Government is not the only agency of government that is having difficulty getting enough tax revenue. The State governments have just about as severe a problem as the Federal Government has, and they are going to have to get that money some place.

Mr. RODINO. I recognize that the gentleman offers this argument in all sincerity and probably with some justification.

I might say, however, this argument was advanced some 4 years ago as well. Together with that, I might say the figures and the estimates are in dispute. Those who support this bill and the study, in my judgment, and others, have shown there would be a stimulation of commerce and that revenue would be flowing into the various States as a result of the elimination of the chaos and confusion. I think we would find the States would not be adversely affected.

In addition, we have title IV of the bill which provides a safeguard whereby the committee would be able to exercise oversight once this measure is enacted.

Mr. ICHORD. The committee makes no recommendations for what fields of taxation the States can explore in order to make up for this possible loss of revenue?

Mr. RODINO. The committee makes no recommendation as to that.

Mr. MACGREGOR. Mr. Chairman, I move to strike out the last word and rise in opposition to the amendment.

Mr. Chairman, the best arguments in opposition to the amendment offered by the gentleman from Ohio (Mr. TAFT) were uttered by the gentleman from

Ohio (Mr. TAFT) during the course of general debate. The gentleman from Ohio (Mr. TAFT) then referred to the fact that this matter has been 7 years in study in the House Committee on the Judiciary and that it would probably be 7 years in study in the other body before it was passed.

We have delayed a long, long time already in dealing with the vexatious problem that confronts countless small enterprises across this country.

I am sure that the other body is not going to act precipitously on this matter. I would hope that toward the end of next year it would act, but I really do not expect it will act before that time.

I suggest that there will be ample time for the other body to consider whether or not we should wait until after the 1970 State legislative sessions before making this law effective.

I do not believe there is a need to legislate delay in this matter. The guidelines are clear and sufficient. Further State legislation will be unnecessary.

Mr. Chairman, I urge that the amendment be defeated.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Ohio (Mr. TAFT).

The amendment was rejected.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose; and the Speaker having resumed the chair, Mr. MONAGAN, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 7906) to regulate and foster commerce among the States by providing a system for the taxation of interstate commerce, pursuant to House Resolution 438, he reported the bill back to the House with sundry amendments adopted by the Committee of the Whole.

The SPEAKER. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment? If not, the Chair will put them en gros.

The amendments were agreed to.

The SPEAKER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MRS. MAY

Mrs. MAY. Mr. Speaker, I offer a motion to recommit.

The SPEAKER. Is the gentlewoman opposed to the bill?

Mrs. MAY. I am in its present form, Mr. Speaker.

The SPEAKER. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mrs. MAY moves to recommit the bill H.R. 7906 to the Committee on the Judiciary.

Mr. RODINO. Mr. Speaker, I move the previous question on the motion to recommit.

The previous question was ordered.

The SPEAKER. The question is on the motion to recommit.

The motion to recommit was rejected.

The SPEAKER. The question is on the passage of the bill.

Mr. TAFT. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The question was taken; and there were—yeas 311, nays 87, not voting 34, as follows:

[Roll No. 93]

YEAS—311

Abbitt	Esch	Mann
Adair	Eshleman	Marsh
Addabbo	Evans, Colo.	Martin
Alexander	Fascell	Mathias
Anderson, Ill.	Feighan	Mayne
Anderson, Tenn.	Findley	Meskill
Andrews, Ala.	Fish	Michel
Andrews, N. Dak.	Fisher	Mikva
Arends	Flood	Miller, Ohio
Ashbrook	Flowers	Minish
Aspinall	Flynt	Minshall
Ayres	Ford, Gerald R.	Mizell
Baring	Ford, William D.	Monagan
Barrett	Foreman	Montgomery
Beall, Md.	Fountain	Moorhead
Belcher	Fraser	Morgan
Bell, Calif.	Frelinghuysen	Morse
Berry	Friedel	Morton
Betts	Fulton, Pa.	Mosher
Bevill	Fulton, Tenn.	Moss
Biaggi	Galifianakis	Murphy, Ill.
Bingham	Garmatz	Murphy, N.Y.
Blackburn	Gaydos	Myers
Blanton	Giaimo	Natcher
Boland	Gibbons	Nichols
Bolling	Gilbert	Nix
Bow	Goldwater	Obey
Brademas	Goodling	O'Konski
Brasco	Gray	Olsen
Bray	Green, Oreg.	O'Neal, Ga.
Brinkley	Green, Pa.	O'Neill, Mass.
Brock	Griffin	Ottinger
Brooks	Gross	Passman
Broomfield	Grover	Patten
Brown, Ohio	Gubser	Pepper
Broyhill, N.C.	Gude	Perkins
Broyhill, Va.	Hagan	Philbin
Buchanan	Haley	Pike
Burke, Fla.	Hall	Pirnie
Burke, Mass.	Halpern	Podell
Burton, Utah	Hamilton	Poff
Bush	Hammer-schmidt	Pollock
Byrne, Pa.	Hanley	Powell
Byrnes, Wis.	Harsha	Preyer, N.C.
Cabell	Harvey	Price, Ill.
Cahill	Hastings	Quie
Camp	Hathaway	Quillen
Carter	Hechler, W. Va.	Railsback
Casey	Heckler, Mass.	Reid, Ill.
Cederberg	Helstoski	Reid, N.Y.
Celler	Henderson	Reifel
Chamberlain	Hogan	Reuss
Clancy	Holifield	Rhodes
Clark	Horton	Riegle
Clay	Howard	Rivers
Cleveland	Hull	Roberts
Cohelan	Hunt	Robison
Collier	Hutchinson	Rodino
Collins	Jacobs	Rogers, Fla.
Colmer	Jarman	Rooney, N.Y.
Conable	Johnson, Pa.	Rooney, Pa.
Conte	Jonas	Rosenthal
Corbett	Jones, N.C.	Roth
Corman	Jones, Tenn.	Roudebush
Coughlin	Kastenmeier	Ruth
Cowger	Keith	Ryan
Culver	King	St Germain
Daddario	Koch	St. Onge
Daniel, Va.	Kuykendall	Sandman
Daniels, N.J.	Kyl	Satterfield
Davis, Ga.	Kyros	Saylor
Davis, Wis.	Landrum	Schadeberg
Dawson	Langen	Scherle
de la Garza	Lennon	Scheuer
Delaney	Lloyd	Schneebeli
Denney	Long, Md.	Schwengel
Dennis	Lowenstein	Scott
Dent	Lujan	Smith, Calif.
Derwinski	Lukens	Smith, Iowa
Devine	McCarthy	Smith, N.Y.
Dickinson	McClory	Snyder
Dingell	McCloskey	Stafford
Donohue	McCulloch	Stanton
Dorn	McDade	Steed
Dowdy	McDonald, Mich.	Steiger, Wis.
Downing	McEwen	Stephens
Dulski	McKneally	Stokes
Duncan	Macdonald, Mass.	Stratton
Dwyer	MacGregor	Stubblefield
Edwards, Ala.	Madden	Stuckey
Edwards, Calif.	Mailliard	Sullivan
Eilberg	Marsh	Symington
Erlenborn	Martin	Taylor
	Mathias	Teague, Calif.
	Mayne	Teague, Tex.
	Meskill	Thompson, Ga.
	Michel	Thomson, Wis.
	Mikva	Tiernan
	Miller, Ohio	Udall
	Minish	Utt
	Minshall	Vander Jagt
	Mizell	Vanik
	Monagan	Vigorito
	Montgomery	Wampler
	Moorhead	Watson
	Morgan	Watts
	Morse	Weicker
	Morton	Whalen
	Mosher	Whalley
	Moss	Whitehurst
	Murphy, Ill.	Whitten
	Murphy, N.Y.	Widnall
	Myers	Wiggins
	Natcher	Williams
	Nichols	Winn
	Nix	Wold
	Obey	Wright
	O'Konski	Wyatt
	Olsen	Wydler
	O'Neal, Ga.	Wylie
	O'Neill, Mass.	Wyman
	Ottinger	Yates
	Passman	Yatron
	Patten	Young
	Pepper	Zablocki
	Perkins	Zion
	Philbin	Zwach
	Pike	
	Pirnie	
	Podell	
	Poff	
	Pollock	
	Powell	
	Preyer, N.C.	
	Price, Ill.	
	Quie	
	Quillen	
	Railsback	
	Reid, Ill.	
	Reid, N.Y.	
	Reifel	
	Reuss	
	Rhodes	
	Riegle	
	Rivers	
	Roberts	
	Robison	
	Rodino	
	Rogers, Fla.	
	Rooney, N.Y.	
	Rooney, Pa.	
	Rosenthal	
	Roth	
	Roudebush	
	Ruth	
	Ryan	
	St Germain	
	St. Onge	
	Sandman	
	Satterfield	
	Saylor	
	Schadeberg	
	Scherle	
	Scheuer	
	Schneebeli	
	Schwengel	
	Scott	
	Smith, Calif.	
	Smith, Iowa	
	Smith, N.Y.	
	Snyder	
	Stafford	
	Stanton	
	Steed	
	Steiger, Wis.	
	Stephens	
	Stokes	
	Stratton	
	Stubblefield	
	Stuckey	
	Sullivan	
	Symington	
	Taylor	
	Teague, Calif.	
	Teague, Tex.	

NAYS—87

Abernethy	Hanna	Pickle
Adams	Hansen, Idaho	Poage
Albert	Hansen, Wash.	Price, Tex.
Anderson, Calif.	Hays	Randall
Annunzio	Hicks	Rarick
Bennett	Hosmer	Rees
Biester	Hungate	Rogers, Colo.
Boggs	Ichord	Ronan
Brotzman	Johnson, Calif.	Roybal
Brown, Calif.	Jones, Ala.	Sebelius
Brown, Mich.	Kazen	Shipley
Burleson, Tex.	Kee	Shriver
Burlison, Mo.	Kleppe	Sikes
Burton, Calif.	Landgrebe	Sisk
Caffery	Leggett	Skubitz
Chappell	Lipscomb	Slack
Clausen, Don H.	Long, La.	Springer
Clawson, Del	McClure	Staggers
Cramer	McFall	Steiger, Ariz.
Dellenback	McMillan	Taft
Eckhardt	Mahon	Talcott
Edmondson	Matsunaga	Tunney
Edwards, La.	May	Ullman
Foley	Meeds	Van Deerlin
Frey	Mink	Waggonner
Fuqua	Mize	Waldie
Gonzalez	Mollohan	White
Griffiths	Patman	Wilson, Bob
	Pelly	Wilson, Charles H.
	Pettis	

NOT VOTING—34

Ashley	Gallagher	Nedzi
Blatnik	Gettys	Nelsen
Button	Hawkins	O'Hara
Carey	Hébert	Pryor, Ark.
Chisholm	Joelson	Pucinski
Conyers	Karth	Purcell
Cunningham	Kirwan	Rostenkowski
Diggs	Kluczynski	Ruppe
Evins, Tenn.	Latta	Thompson, N.J.
Fallon	Miller, Calif.	Watkins
Farbstein	Mills	Wolff

So the bill was passed.

The Clerk announced the following pairs:

Mr. Hébert with Mr. Latta.
Mr. Kirwan with Mr. Cunningham.
Mr. Kluczynski with Mr. Ruppe.
Mr. Miller of California with Mr. Thompson of New Jersey.
Mr. O'Hara with Mr. Nelsen.
Mr. Mills with Mr. Watkins.
Mr. Evins of Tennessee with Mr. Joelson.
Mr. Fallon with Mr. Pryor of Arkansas.
Mr. Pucinski with Mr. Nedzi.
Mr. Farbstein with Mr. Button.
Mr. Rostenkowski with Mr. Wolff.
Mr. Gallagher with Mr. Hawkins.
Mr. Casey with Mr. Conyers.
Mr. Ashley with Mr. Diggs.
Mr. Purcell with Mr. Karth.
Mr. Blatnik with Mr. Gettys.

Mr. MAHON changed his vote from "yea" to "nay."

Mr. BOLAND changed his vote from "nay" to "yea."

Mr. ABERNETHY changed his vote from "yea" to "nay."

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. RODINO. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed, and to include extraneous matter.

The SPEAKER. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

PROVIDING FOR CONCURRING IN THE SENATE AMENDMENTS TO H.R. 4229—TO CONTINUE FOR A TEMPORARY PERIOD THE EXISTING SUSPENSION OF DUTY ON HEPTANOIC ACID

Mr. COLMER, from the Committee on Rules, reported the following privileged resolution (H. Res. 455) providing for concurring in the Senate amendments to H.R. 4229 (Rept. No. 91-328), which was referred to the House Calendar and ordered to be printed:

H. RES. 455

Resolved, That immediately upon the adoption of this resolution the bill (H.R. 4229) to continue for a temporary period the existing suspension of duty on heptanoic acid, with the Senate amendments thereto, be, and the same is hereby taken from the Speaker's table, to the end that the Senate amendments be, and the same are hereby agreed to.

PERMISSION TO FILE CONFERENCE REPORT ON H.R. 11400, SUPPLEMENTAL APPROPRIATIONS, 1969

Mr. SMITH of Iowa. Mr. Speaker, I ask unanimous consent that the managers on the part of the House on the bill H.R. 11400 may have until midnight Friday, June 27, to file a conference report.

The SPEAKER. Is there objection to the request of the gentleman from Iowa?

There was no objection.

LEGISLATIVE PROGRAM

(Mr. GERALD R. FORD asked and was given permission to address the House for 1 minute.)

Mr. GERALD R. FORD. Mr. Speaker, I take this time in order to ask the distinguished majority leader the program for the remainder of this week.

Mr. ALBERT. Mr. Speaker, will the gentleman yield?

Mr. GERALD R. FORD. I yield to the gentleman from Oklahoma.

Mr. ALBERT. Mr. Speaker, as previously announced, we will not have any legislative business tomorrow, but we expect on Friday to consider the Senate amendment to H.R. 4229 which authorizes a 30-day withholding tax provision as a temporary measure.

Also, on Friday we may have the conference report on H.R. 11400, the second supplemental appropriations bill for fiscal year 1969, and we may also have the conference report on H.R. 8644, which relates to the freeze on aid to dependent children.

Then, on Monday, we are rescheduling the surtax bill, which is H.R. 12290, pursuant to the request of the distinguished chairman of the Committee on Ways and Means, made to the leadership today. That will be under a 4-hour closed rule.

Mr. GERALD R. FORD. That will be programed and scheduled and voted on Monday next?

Mr. ALBERT. That is what we expect.

Mr. GERALD R. FORD. Mr. Speaker, I thank the gentleman.

HOUR OF MEETING ON FRIDAY, JUNE 27

Mr. ALBERT. Mr. Speaker, for the benefit of Members many of whom have asked that this request be made, I ask unanimous consent that when the House adjourns on Thursday it adjourn to meet at 11 o'clock a.m. on Friday.

The SPEAKER. Is there objection to the request of the gentleman from Oklahoma?

Mr. GROSS. Mr. Speaker, reserving the right to object, what will be the necessity, or what will be the rule providing for the supplementary surtax resolution?

Is it to be 1 hour?

Mr. ALBERT. If the gentleman will yield, it is for 1 hour, and the amendment provides for a 30-day extension.

On that, Mr. Speaker, if the gentleman will yield, I defer to the majority whip.

Mr. BOGGS. Mr. Speaker, that is correct.

Mr. GROSS. Mr. Speaker, how much time for debate will be allowed on the bill?

Mr. BOGGS. Mr. Speaker, the bill does not come up until Monday.

Mr. GROSS. Then what is programed for Friday?

Mr. BOGGS. Mr. Speaker, the rule provides for adoption of the Senate amendments, and there will be 1 hour of debate under the control of the chairman of the Committee on Rules, the gentleman from Mississippi (Mr. COLMER).

Mr. GROSS. That is all?

Mr. BOGGS. That is all.

Mr. ANDREWS of Alabama. Mr. Speaker, will the gentleman yield?

Mr. GROSS. I yield to the gentleman from Alabama.

Mr. ANDREWS of Alabama. Mr. Speaker, I would like to ask the majority leader, will there be any other legislative business next week?

Mr. ALBERT. Yes.

Mr. ANDREWS of Alabama. Does the gentleman have the schedule at this time?

Mr. ALBERT. I do not. There are at least two other bills that are eligible, but I would like to defer that until Friday.

Mr. ANDREWS of Alabama. But the only one the gentleman is certain of is the tax bill for Monday?

Mr. ALBERT. I am as certain as I can be, and of course there are always reservations, but we expect to consider it on Monday.

Mr. GROSS. Mr. Speaker, further reserving the right to object, what was the other bill we will be taking up on Friday?

Mr. ALBERT. As I indicated, there are two conference reports—others may be ready on Friday—but as far as I know there are two: One is the conference report on the AFDC freeze and the other is the conference report on the supplemental appropriation bill.

Mr. GROSS. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from Oklahoma?

There was no objection.

PERMISSION TO FILE CONFERENCE REPORT ON H.R. 8644, SUSPENSION OF DUTY ON CHICORY ROOTS

Mr. BOGGS. Mr. Speaker, I ask unanimous consent that the managers on the part of the House may have until midnight tomorrow night to file a conference report on H.R. 8644, to make permanent the existing temporary suspension of duty on crude chicory roots.

The SPEAKER. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

JOE McCAFFREY OBSERVES 25TH YEAR OF SERVICE ON CAPITOL HILL

(Mr. STAGGERS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. STAGGERS. Mr. Speaker, it is fitting, I think, that we take the opportunity to honor Joe McCaffrey as he observes his 25th year of service on Capitol Hill. No news correspondent in our time has shown a warmer or more sympathetic understanding of the U.S. Congress than has Mr. McCaffrey. His interpretations of legislative maneuvering are consistently to the point, clear, and accurate. They find a large and appreciative audience which has learned to rely on his observations and his conclusions. You can always find him where things are happening. He is a friend to every Member of Congress, and in turn each Member respects his judgment and his reverence for the finest traditions of reporting. He is an honor and an ornament to the news media, and especially to the television and radio programs on which he speaks so effectively and so gracefully.

Mr. Speaker, when I consider my personal relations with Joe McCaffrey, I am inclined to echo the words of admiration spoken some years ago for another newsman of unimpeachable integrity:

Some day I'll pass by the Great Gates of Gold,
And see a man pass through unquestioned and bold.
"A Saint?" I'll ask, and old Peter'll reply:
"No, he carries a pass—he's a newspaper guy."

May the Hill have many more years of Joe McCaffrey, and may all his days be days of contentment and satisfaction with a job well done. And may the Lord watch over his goings in and coming out from this day hence forth and forever more.

CRISIS OF CONFIDENCE HOLDS BACK SURTAX

(Mr. PATMAN asked and was given permission to address the House for 1 minute, to revise and extend his remarks and to include extraneous material.)

Mr. PATMAN. Mr. Speaker, the problem of mustering support for an extension of the surtax can be traced directly to a "crisis of confidence" about the Nixon administration's Treasury Department.

Mr. Speaker, many people in this Nation do not have confidence that Secretary of the Treasury David M. Kennedy will push for real tax reform if the surtax is extended. These people know that Secretary Kennedy is tied to the big interests in this country and they doubt that he will have the courage to buck them in a showdown fight over tax reform legislation.

So long as Secretary Kennedy maintains his massive financial ties to his former bank, the Continental Illinois National Bank of Chicago, the people and the Congress cannot have confidence that he will carry out his duties in the interests of the public. Today, he receives a $4,800 monthly pension from the Continental Illinois National Bank and has his health and life insurance paid by the bank. He has already benefited from a $1,400,000 stock option while in office and has a promise of a $200,000 payment from the bank the moment he leaves office.

In short, Mr. Kennedy is receiving much more from the bank than he is from the Federal Government for the performance of his official duties.

With this background it is difficult for the American people to have confidence in a Secretary of the Treasury who will not sever his ties to his former employer. It is difficult for the people to believe that such an official will fight for tax reform that is opposed by so many of his former associates in the banking and business world.

The Secretary's performance—and his outside financial ties—have created a severe crisis of confidence—a new credibility gap in the Federal Government.

Mr. Speaker, I supported the surtax as a necessary economic measure in the last Congress. I have announced my support of extension of the tax in this Congress, but now I am beginning to have serious doubts whether we can expect Mr. Kennedy and his cohorts at the Treasury to back tax reform once the extension is enacted.

It is unfair to saddle the people with this 10-percent surtax if there is no concrete assurance that the big boys will be forced to pay their fair share through the closing of these tax loopholes. The American people are angry over high taxes and high interest rates and they want more than tepid promises from a Secretary of the Treasury who holds such massive interests in the financial world.

Mr. Speaker, I am now convinced that this Congress should not vote an extension of the surtax—for any extended period—until the tax reform measures are reported to the floor and incorporated as a package with the surtax.

The Congress could continue the tax for 2 or 3 weeks by resolution while the administration and its illustrious Secretary of the Treasury got behind a tax reform measure. These 2 or 3 weeks will give the administration plenty of time to muster the support on the Republican side of the aisle.

Let us see if the Secretary of the Treasury is willing to tax his former allies in the banking and business community before we vote this surtax. It is a chance for the Secretary to put up or shut up on tax reform if he really wants it.

This should be a broad set of tax reforms covering every conceivable loophole. And this would mean closing the loopholes through which the commercial banking industry receives millions of dollars in subsidies. For example, the so-called bad debt reserve is a tax loophole through which the financial institutions escape nearly a billion dollars in taxes every year.

Will the Secretary have the courage to close this loophole while he receives his pension from the Continental Illinois National Bank?

The Secretary has failed miserably in preventing the banks from raising interest rates. He refused to do anything—to say anything—to stop the latest prime rate increase from 7½ to 8½ percent. His comments were almost an open invitation for the banks to raise the rates.

Last week, he was before the Banking and Currency Committee and stated that he did nothing and would do nothing to roll back these high interest rates.

Mr. Speaker, it is predictable that Secretary Kennedy's attitude on tax reform will end up like his views on high interest rates. He will not do anything meaningful in either area. He will let the public be gouged both by taxes and by high interest rates.

Mr. Speaker, it is obvious that if we want something done about tax reform and high interest rates, we are going to need a new Secretary of the Treasury—one who can put the public interest ahead of his private interests.

Earlier this year, the Joint Economic Committee, of which I am chairman, supported extension of the surtax but specifically coupled it with the call for tax reforms. This was a sound position and it is one which should be followed now.

The Joint Economic Committee deliberated this issue and took a very firm stand on the great need for tax reform. The committee called for immediate action to reform the Federal revenue structure and we also pointed out that it was "essential for many other reasons and long overdue":

> Despite pressing matters of immediate fiscal policy, we must not lose sight of the objective of revenue reform. This is an opportune time to accomplish this long-delayed job, as the public is giving strong support to this effort. Revenue reform will also eliminate some of the objections to using the tax system for short-run stabilization. It will eliminate many of the manifest inequities in the present tax structure that permit numerous individuals with high incomes to avoid paying their just share of support of Federal programs.

I would like to stress the fact that the committee argued against letting the surtax extension be an excuse for inaction on tax reform. The language is as follows:

> It is imperative that extension of the surtax and excises should not be the excuse for relaxing efforts to tighten control over expenditures, to increase economy and efficiency in Government, to eliminate obsolete or low priority items in the budget, and to drastically revise the tax system to produce a larger tax base, tax equity, and steady economic growth. In the longer run, no fiscal policy can long succeed unless these objectives are realized.

So, today, I am withholding my unqualified support of the extension of the surtax until such time as we have a tax reform bill and until Secretary Kennedy is willing to come to Capitol Hill and fight for these reforms.

TRAGIC SITUATION IN NORTHERN IRELAND

(Mr. O'NEILL of Massachusetts asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. O'NEILL of Massachusetts. Mr. Speaker, I rise today to direct the attention of my colleagues to the tragic situation in Northern Ireland. Today a bipartisan group of 104 Members of this body asked President Nixon by letter to express our distress over discrimination against Roman Catholics in Northern Ireland. The tragedy of a policy of discrimination is written in the histories of many nations. I believe it would be foolish for the Government of Northern Ireland to ignore the clear and persuasive lessons of history.

I should like to take this opportunity to commend the gentleman from California (Mr. BURTON), for his leadership and effort to the end that this discrimination cease.

Our letter said, in part:

> The opportunity to seek and obtain employment and housing without regard to religion, race, creed or national origin must be guaranteed, if the cause of human dignity is to be advanced by this generation, as the cause of freedom was advanced by our common forefathers.

We ask the President to convey our feelings to Prime Minister James Chichester-Clark of Northern Ireland and to Prime Minister Harold Wilson, not for our benefit but for the good of their nations and the people of Northern Ireland. The question in Northern Ireland is the issue of civil rights, but the rights sought are human rights inalienable and innate. All people who cherish liberty and justice must support and insure equal protection and equal rights under the law. The issue of civil rights is the concept of humanity for what makes us human is our concern for our fellow man and our protection of his interest as our own.

We ask the President to inform the people of Northern Ireland of our pledge of friendship and support in solving this problem, which is tearing their nation and hurting all of its citizens.

I am particularly disturbed, as are my colleagues, that intolerance and discrimination are encouraged by and rooted in the laws of Northern Ireland. We all well know that prejudice cannot be uprooted in a day, but when discrimination is founded in law, intolerance is fed and flourishes.

On Saturday, June 28, the civil rights movement of Northern Ireland will hold a mass rally and march for civil rights. The participants will march from Strabane to Derry to demonstrate their support for equal opportunity and equal protection under the laws. I would like my colleagues and the Nation to focus

their attention on this demonstration and let the people of Northern Ireland know that we support them in their attempts to peacefully change harmful practices and discriminatory laws. We hope to see responsible men on all sides remove the blinds of hate and to bind the wounds of recent conflict.

I urge President Nixon to make known to the leaders of Northern Ireland and of Great Britain our hope that the rights and safety of these marchers will be protected. The state must protect its citizens and the rights of the minority.

I am somewhat disturbed by information I have received regarding the possibility that 8,000 special police reserves will be called up. If these forces known as B-Specials are being called up merely to free the regular forces from daily duties so that the regular police will be able to protect the marchers then all is well. However, if this special constabulary is used to harass the marchers or to assist the extremist, then I am sure that only violent confrontation will result.

In the past, unfortunately, the B-Specials have failed to protect the civil rights demonstrators and have in several cases joined with those extremist who sought to do the marchers harm. During the dairy riots, the allegations of police brutality and collusion with the Ian Paisley extremist arose because of the activities of the special constabulary and not primarily of the regular police.

Because of this and similar incidences, the Catholics in Northern Ireland regard this special force as a political militia and do not expect fair treatment at their hands.

I urge the Government of Northern Ireland to protect these marchers, to insure their safety and thereby demonstrate that the police are not a political tool and that the safety of all citizens is the concern of government.

No people is free unless all are free; no man is secure unless all men are secure. I urge the President to express our concern, and I urge all my colleagues to focus attention on June 28.

Mr. BURTON of California. Mr. Speaker, will the gentleman yield?

Mr. O'NEILL of Massachusetts. I yield to the gentleman from California.

Mr. BURTON of California. Mr. Speaker, I should like to be associated with the remarks of my distinguished colleague from Massachusetts (Mr. O'NEILL) and to commend him, for he has eloquently and forthrightly expressed the concerns which prompted us to initiate this letter to President Nixon.

The right of free men to petition for redress of grievances must be the concern of all free men. The cause of human dignity transcends geographic bounds or political lines of demarkation.

Thus, we in the Congress who joined together to express our concern to President Nixon and to request of him that he relay that concern to the Governments of Great Britain and North Ireland did so to strengthen the common cause of human dignity, to urge that reason prevail over prejudice, that hate and violence bred of past differences not continue to blind men to present needs.

We will watch as free men seek to call attention to their plight by peaceful demonstration in North Ireland June 28 and it is our fervent hope that the rights of these marchers and their safety will be guaranteed.

I am inserting at this point in the RECORD, the full text of the letter of June 24 to President Nixon, together with the names of my colleagues who joined in signing it.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., June 24, 1969.

PRESIDENT RICHARD M. NIXON,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: We the undersigned Members of Congress are greatly concerned about the present situation in Northern Ireland. The policy of the Government of Northern Ireland is one designed to discriminate against the Catholic minority in the area of jobs, housing and equal voting rights, among other things.

We are mindful that neither intolerance nor prejudice is unique to any geography or people. They exist wherever reason gives way to passion. However, we know that laws, as an expression of a Government's principles, can discourage and help eliminate the practice of discrimination. Therefore, we are even more disturbed that intolerance and discrimination are encouraged by and rooted in the laws of Northern Ireland. Any society purporting to be democratic must ensure equal protection and equal rights under the law.

The right of all citizens to vote in elections at all levels of government and the guarantee that the vote of each citizen weighs equally is essential in a free society.

The opportunity to seek and obtain employment and housing without regard to religion, race, creed or national origin must be guaranteed, if the cause of human dignity is to be advanced by this generation, as the cause of freedom was advanced by our common forefathers.

Whenever injustice exists, free men everywhere are required by conscience to speak. Thus it is, viewing the oppression of the Catholic minority in North Ireland, we request you to express, through our State Department, to Prime Minister James Chichester-Clark of North Ireland and Prime Minister Harold Wilson of Great Britain, our grave concern. We hope that you will make known this concern to the peoples and Governments of Ireland, Northern Ireland and Great Britain, and also make known our fervent hope and pledge of friendship and support in solving this problem which is the concern of every man who cherishes liberty and justice.

We hope these expressions will urge responsible men on all sides to remove the blinds of hate, to put aside the smoldering memory of past offenses and to bind the wounds of recent conflict. We hope for the sake of all the people of Northern Ireland that these changes occur soon, for no Nation can remain free when any of its people are oppressed.

As we strive to strengthen the common bond that unites all members of our society, we urge the people and Government of Northern Ireland to do the same. It is only in such a climate of shared humanity that concern for historic differences can give way to concern for the real and pressing problems of today.

Sincerely,

THOMAS P. O'NEILL, JR., PHILLIP BURTON, JOHN W. MCCORMACK, Speaker of the House; THOMAS E. MORGAN, WILLIAM S. MAILLIARD, JOHN E. MOSS, GEORGE BROWN, JR., DON EDWARDS, AUGUSTUS HAWKINS, FRANK E. EVANS, WILLIAM L. ST. ONGE, EMILIO Q. DADDARIO, DANTE B. FASCELL, PATSY MINK, ABNER J. MIKVA, WILLIAM T. MURPHY, MELVIN PRICE, DANIEL J. RONAN, JOHN BRADEMAS, EDWARD P. BOLAND, JAMES A. BURKE, HAROLD D. DONOHUE, HASTINGS KEITH, PHILIP J. PHILBIN, SAMUEL N. FRIEDEL, JOHN CONYERS, JR., CHARLES C. DIGGS, LUCIEN N. NEDZI, DONALD M. FRASER, JOSEPH E. KARTH, WILLIAM "BILL" CLAY, ARNOLD OLSEN, DOMINICK V. DANIELS, HENRY HELSTOSKI, JAMES J. HOWARD, CHARLES S. JOELSON, JOSEPH MINISH, PETER W. RODINO, JR., FRANK THOMPSON, JR., JOSEPH P. ADDABBO, MARIO BIAGGI, JONATHAN B. BINGHAM, DANIEL E. BUTTON, HUGH L. CAREY, THADDEUS J. DULSKI, LEONARD FARBSTEIN, SEYMOUR HALPERN, EDWARD I. KOCH, ALLARD K. LOWENSTEIN, RICHARD D. MCCARTHY, MARTIN B. MCKNEALLY, JOHN M. MURPHY, RICHARD L. OTTINGER, BERTRAM L. PODELL, ADAM C. POWELL, BENJAMIN S. ROSENTHAL, WILLIAM F. RYAN, JAMES H. SCHEUER, LESTER L. WOLFF, JR., THOMAS L. ASHLEY, MICHAEL A. FEIGHAN, CHARLES A. VANIK, WILLIAM A. BARRETT, JAMES A. BYRNE, JOHN H. DENT, JOSHUA EILBERG, DANIEL J. FLOOD, JOSEPH M. GAYDOS, WILLIAM J. GREEN, WILLIAM S. MOORHEAD, ROBERT NIX, FERNAND J. ST GERMAIN, ROBERT O. TIERNAN, HENRY B. GONZALEZ, ROBERT W. KASTENMEIER, HENRY S. REUSS, CLEMENT J. ZABLOCKI, R. LAWRENCE COUGHLIN, JIM WRIGHT, WILLIAM H. BATES, CORNELIUS E. GALLAGHER, JOSEPH M. MCDADE, JOSEPH P. VIGORITO, LEONOR K. SULLIVAN, FRANK J. BRASCO, JAMES R. GROVER, THOMAS J. MESKILL, GILBERT GUDE, CHARLES WILSON, TORBERT MACDONALD, MARTHA GRIFFITHS, PETER KYROS, MARGARET M. HECKLER, F. BRADFORD MORSE, ROBERT N. GIAIMO, JAMES M. HANLEY, FRANK J. HORTON, EDWARD J. PATTEN, SILVIO O. CONTE, JEFFERY COHELAN, JACOB H. GILBERT, FLORENCE P. DWYER, SHIRLEY CHISHOLM.

Members of Congress.

Mr. O'NEILL of Massachusetts. I want to thank the gentleman from California for the work he has done in regard to this matter.

SUPREME COURT DECISION ON ADAM CLAYTON POWELL, JR.

(Mr. ROGERS of Colorado asked and was given permission to address the House for 1 minute and to include extraneous matter.)

Mr. ROGERS of Colorado. Mr. Speaker, the Supreme Court of the United States in case No. 138, October term, 1968, handed down a decision on June 16, 1969, in the case of ADAM CLAYTON POWELL, JR., and others, petitioners, against JOHN W. MCCORMACK and others.

I believe this to be a historic decision and I ask unanimous consent that the decision be printed in the RECORD at this point.

The SPEAKER. Is there objection to the request of the gentleman from Colorado?

There was no objection.

The Supreme Court decision follows:

[Supreme Court of the United States—No. 138, October term, 1968]

ADAM CLAYTON POWELL, JR., ET AL., PETITIONERS, v. JOHN W. McCORMACK ET AL.

(On writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit, June 16, 1969)

MR. CHIEF JUSTICE WARREN delivered the opinion of the Court.

In November 1966, Petitioner Adam Clayton Powell, Jr., was duly elected from the 18th Congressional District of New York to serve in the United States House of Representatives for the 90th Congress. However, pursuant to a House resolution, he was not permitted to take his seat. Powell (and some of the voters of his district) then filed suit in Federal District Court, claiming that the House could exclude him only if it found he failed to meet the standing requirements of age, citizenship, and residence contained in Art. I, § 2, of the Constitution—requirements the House specifically found Powell met—and thus had excluded him unconstitutionally. The District Court dismissed petitioners' complaint "for want of jurisdiction of the subject matter." The Court of Appeals affirmed the dismissal, although on somewhat different grounds, each judge filing a separate opinion. We have determined that it was error to dismiss the complaint and that Petitioner Powell is entitled to a declaratory judgment that he was unlawfully excluded from the 90th Congress.

I. FACTS

During the 89th Congress, a Special Subcommittee on Contracts of the Committee on House Administration conducted an investigation into the expenditures of the Committee on Education and Labor, of which Petitioner Adam Clayton Powell, Jr., was chairman. The Special Subcommittee issued a report concluding that Powell and certain staff employees had deceived the House authorities as to travel expenses. The report also indicated there was strong evidence that certain illegal salary payments had been made to Powell's wife at his direction. See H.R. Rep. No. 2349, 89th Cong., 2d Sess., 6–7 (1966). No formal action was taken during the 89th Congress. However, prior to the organization of the 90th Congress, the Democrat members-elect met in caucas and voted to remove Powell as chairman of the Committee on Education and Labor. See H.R. Rep. No. 27, 90th Cong., 1st Sess., 1–2 (1967).

When the 90th Congress met to organize in January 1967, Powell was asked to step aside while the oath was administered to the other members-elect. Following the administration of the oath to the remaining members, the House discussed the procedure to be followed in determining whether Powell was eligible to take his seat. After some debate, by a vote of 364 to 64 the House adopted House Resolution 1, which provided that the Speaker appoint a Select Committee to determine Powell's eligibility. 113 Cong. Rec. 16 (daily ed. Jan. 10, 1967). Although the resolution prohibited Powell from taking his seat until the House acted on the Select Committee's report, it did provide that he should receive all the pay and allowances due a member during the period.

The Select Committee, composed of nine lawyer-members, issued an invitation to Powell to testify before the Committee. The invitation letter stated that the scope of the testimony and investigation would include Powell's qualifications as to age, citizenship, and residency; his involvement in a civil suit (in which he had been held in contempt); and "[m]atters of . . . alleged official misconduct since January 3, 1961." See Hearings on H. R. Res. No. 1 before Select Committee Pursuant to H. R. Res. No. 1, 90th Cong., 1st Sess., 5 (1967) (hereinafter Hearings). Powell appeared at the Committee hearing held on February 8, 1967. After the Committee denied in part Powell's request that certain adversary-type procedures be followed,[1] Powell testified. He would, however, give information relating only to his age, citizenship, and residency; upon the advice of counsel, he refused to answer other questions.

On February 10, 1967, the Select Committee issued another invitation to Powell. In the letter, the Select Committee informed Powell that its responsibility under the House Resolution extended to determining not only whether he met the standing qualifications of Art. I, § 2, but also to "inquire into the question of whether you should be punished or expelled pursuant to the powers granted . . . the House under article I, section 5, . . . of the Constitution. In other words, the Select Committee is of the opinion that at the conclusion of the present inquiry, it has authority to report back to the House recommendations with respect to . . . seating, expulsion or other punishment." See Hearings 110. Powell did not appear at the next hearing, held February 14, 1967. However, his attorney was present, and he informed the Committee that Powell would not testify about matters other than his eligibility under the standing qualifications of Art. I, § 2. Powell's attorney reasserted Powell's contention that the standing qualifications were the exclusive requirements for membership, and he further urged that punishment or expulsion was not possible until a member had been seated. See Hearings 111–113.

The Committee held one further hearing at which neither Powell nor his attorneys were present. Then, on February 23, 1967, the Committee issued its report, finding that Powell met the standing qualifications of Art. I, § 2. H.R. Rep. No. 27, 90th Cong., 1st Sess., 31 (1967). However, the Committee further reported that Powell had asserted an unwarranted privilege and immunity from the processes of the courts of New York; that he had wrongfully diverted House funds for the use of others and himself; and that he had made false reports on expenditures of foreign currency to the Committee on House Administration. *Id.*, at 31–32. The Committee recommended that Powell be sworn and seated as a member of the 90th Congress but that he be censured by the House, fined $40,000 and be deprived of his seniority. *Id.*, at 33.

The report was presented to the House on March 1, 1967, and the House debated the Select Committee's proposed resolution. At the conclusion of the debate, by a vote of 222 to 202 the House rejected a motion to bring the resolution to a vote. An amendment to the resolution was then offered; it called for the exclusion of Powell and a declaration that his seat was vacant. The Speaker ruled that a majority vote of the House would be sufficient to pass the resolution if it were so amended. 113 Cong. Rec. 1942 (daily ed. March 1, 1967). After further debate, the amendment was adopted by a vote of 248 to 176. Then the House adopted by a vote of 307 to 116 House Resolution No. 278 in its amended form, thereby excluding Powell and directing that the Speaker notify the Governor of New York that the seat was vacant.

Powell and 13 voters of the 18th Congressional District of New York subsequently instituted this suit in the United States District Court for the District of Columbia. Five members of the House of Representatives were named as defendants individually and "as representatives of a class of citizens who are presently serving . . . as members of the House of Representatives." John W. McCormack was named in his official capacity as Speaker, and the Clerk of the House of Representatives, the Sergeant-at-Arms and the Doorkeeper were named individually and in their official capacities. The Complaint alleged that House Resolution No. 278 violated the Constitution, specifically Art. I, § 2, cl. 1, because the resolution was inconsistent with the mandate that the members of the House shall be elected by the people of each State, and Art. I, § 2, cl. 2, which, petitioners alleged, sets forth the exclusive qualifications for membership.[2] The Complaint further alleged that the Clerk of the House threatened to refuse to perform the service for Powell to which a duly-elected Congressman is entitled, that the Sergeant-at-Arms refused to pay Powell his salary, and that the Doorkeeper threatened to deny Powell admission to the House Chamber.

Petitioners asked that a three-judge court be convened.[3] Further, they requested the District Court grant a permanent injunction restraining respondents from executing the House Resolution, and enjoining the Speaker from refusing to administer the oath, the Clerk from refusing to perform the duties due a Representative, the Sergeant-at-Arms from refusing to pay Powell his salary and the Doorkeeper from refusing to admit Powell to the Chamber.[4] The complaint also requested a declaratory judgment that Powell's exclusion was unconstitutional.

The District Court granted respondents' motion to dismiss the complaint "for want of jurisdiction of the subject matter." *Powell* v. *McCormack*, 266 F. Supp. 354 (D.C.D.C. 1967).[5] The Court of Appeals for the District of Columbia Circuit affirmed on somewhat different grounds, with each judge filing a separate opinion. *Powell* v. *McCormack*, 129 U.S. App. D.C. 354, 395, F.2d 577 (C.A.D.C. Cir. 1968). We granted certiorari 393 U.S. 949 (1968). While the case was pending on our docket, the 90th Congress officially terminated and the 91st Congress was seated. In November 1968, Powell had again been elected as the representative of the 18th Congressional District of New York, and he was seated by the 91st Congress. The resolution seating Powell also fined him $25,000. See H.R. Res. No. 2, 91st Cong., 1st Sess., 115 Cong. Rec. 21 (daily ed., January 3, 1969). Respondents then filed a suggestion of mootness. We postponed further consideration of this suggestion to a hearing on the merits. 393 U.S. 1060 (1969).

Respondents press upon us a variety of arguments to support the court below; they will be considered in the following order. (1) Events occurring subsequent to the grant of certiorari have rendered this litigation moot. (2) The Speech or Debate Clause of the Constitution, Art. I, § 6, insulates respondents' action from judicial review. (3) The decision to exclude Petitioner Powell is supported by the power granted to the House of Representatives to expel a member. (4) This Court lacks subject matter jurisdiction over petitioners' action. (5) Even if subject matter jurisdiction is present, this litigation is not justifiable either under the general criteria established by this Court or because a political question is involved.

II. MOOTNESS

After certiorari was granted, respondents filed a memorandum suggesting that two events which occurred subsequent to our grant of certiorari require that the case be dismissed as moot. On January 3, 1969, the House of Representatives of the 90th Congress officially terminated, and Petitioner Powell was seated as a member of the 91st Congress. 115 Cong. Rec. 22 (daily ed., January 3, 1969). Respondents insist that the gravamen of petitioners' complaint was the failure of the 90th Congress to seat Petitioner Powell and that, since the House of Representatives is not a continuing body[6] and Powell has now been seated, his claims are moot. Petitioners counter that three issues remain unresolved and thus this litiga-

Footnotes at end of article.

tion presents a "case or controversy" within the meaning of Art. III: [7] (1) whether Powell was unconstitutionally deprived of his seniority by his exclusion from the 90th Congress; (2) whether the resolution of the 91st Congress imposing as "punishment" a $25,000 fine is a continuation of respondents' allegedly unconstitutional exclusion, see H.R. Res. No. 2, 91st Cong., 1st Sess., 115 Cong., Rec. 21 (daily ed., January 3, 1969); and (3) whether Powell is entitled to salary withheld after his exclusion from the 90th Congress. We conclude that Powell's claim for back salary remains viable even though he has been seated in the 91st Congress and thus find it unnecessary to determine whether the other issues have become moot.[8]

Simply stated, a case is moot when the issues presented are no longer "live" or the parties lack a legally cognizable interest in the outcome. See E. Borchard, Declaratory Judgments 35–37 (2d ed. 1941). Where one of the several issues presented becomes moot, the remaining live issues supply the constitutional requirement of a case or controversy. See *United Public Workers* v. *Mitchell*, 330 U.S. 75, 86–94 (1947); 6A, J. Moore, Federal Practice ¶ 57.13 (2d ed. 1966). Despite Powell's obvious and continuing interest in his withheld salary, respondents insist that *Alejandrino* v. *Quezon*, 271 U.S. 528 (1926), leaves us no choice but to dismiss this litigation as moot. Alejandrino, a duly appointed Senator of the Philippine Islands, was suspended for one year by a resolution of the Philippine Senate and deprived of all "prerogatives, privileges and emoluments" for the period of his suspension. The Supreme Court of the Philippines refused to enjoin the suspension. By the time the case reached this Court, the suspension had expired and the Court dismissed as moot Alejandrino's request that the suspension be enjoined. Then, *sua sponte*,[9] the Court considered whether the possibility that Alejandrino was entitled to back salary required it "to retain the case for the purpose of determining whether he [Alejandrino] may not have a mandamus for this purpose." *Id.*, at 533. Characterizing the issue of Alejandrino's salary as a "mere incident" to claim that the suspension was improper, the Court noted that he had not briefed the salary issue and that his request for mandamus did not set out with sufficient clarity the official or set of officials against whom the mandamus should issue. *Id.*, at 533–534. The Court therefore refused to treat the salary claim and dismissed the entire action as moot.

Respondents believe that Powell's salary claim is also a "mere incident" to his insistence that he was unconstitutionally excluded so that we should likewise dismiss this entire action as moot. This argument fails to grasp that the reason for the dismissal in *Alejandrino* was not that Alejandrino's deprivation of salary was insufficiently substantial to prevent the case from becoming moot, but rather that his failure to plead sufficient facts to establish his mandamus claim made it impossible for any court to resolve the mandamus request.[10] By contrast, petitioners' complaint names the official responsible for the payment of congressional salaries and asks for both mandamus and an injunction against that official.[11]

Furthermore, even if respondents are correct that Powell's averments as to injunctive relief are not sufficiently definite, it does not follow that this litigation must be dismissed as moot. Petitioner Powell has not been paid his salary by virtue of an allegedly unconstitutional House resolution. That claim is still unresolved and hotly contested by clearly adverse parties. Declaratory relief has been requested, a form of relief not available when *Alejandrino* was decided.[12] A court may grant declaratory relief even though it chooses not to issue an injunction or mandamus. See *United Public Workers* v. *Mitchell*, supra, at 93; cf. *United States* v. *California*, 332 U.S. 19, 25–26 (1947). A declaratory judgment can then be used as a predicate to further relief, including an injunction. 28 U.S.C. § 2202 (1964 ed.); see *Vermont Structural Slate Co.* v. *Tatko Brothers Slate Co.*, 253 F. 2d 29 (C. A. 2d Cir. 1958); *United States Lines Co.* v. *Shaughnessy*, 195 F. 2d 385 (C. A. 2d Cir. 1952). *Alejandrino* stands only for the proposition that, where one claim has become moot and the pleadings are insufficient to determine whether the plaintiff is entitled to another remedy, the action should be dismissed as moot.[13] There is no suggestion that Powell's averments as to declaratory relief are insufficient and his allegedly unconstitutional deprivation of salary remains unresolved.

Respondents further argue that Powell's "wholly incidental and subordinate" demand for salary is insufficient to prevent this litigation from becoming moot. They suggest that the "primary and principal relief" sought was the seating of Petitioner Powell in the 90th Congress rendering his presumably secondary claims not worthy of judicial consideration. *Bond* v. *Floyd*, 385 U.S. 116 (1966), rejects respondents' theory that the mootness of a "primary" claim requires a conclusion that all "secondary" claims are moot. At the *Bond* oral argument it was suggested that the expiration of the session of the Georgia Legislature which excluded Bond had rendered the case moot. We replied: "The State has not pressed this argument, and it could not do so, because the State has stipulated that if Bond succeeds on his appeal he will receive back salary for the term from which he was excluded." 385 U.S., at 128, n. 4. *Bond* is not controlling, argue respondents, because the legislative term from which Bond was excluded did not end until December 31, 1966,[14] and our decision was rendered December 5; further, when *Bond* was decided, Bond had not as yet been seated while Powell has been.[15] Respondents do not tell us, however, why these factual distinctions create a legally significant difference between *Bond* and this case. We relied in *Bond* on the outstanding salary claim not the facts respondents stress to hold that the case was not moot.

Finally, respondents seem to argue that Powell's proper action to recover salary is a suit in the Court of Claims, so that, having brought the wrong action, a dismissal for mootness is appropriate. The short answer to this argument is that it confuses mootness with whether Powell has established a right to recover against the Sergeant-at-Arms, a question which is inappropriate to treat at this stage of the litigation.[16]

III. SPEECH OR DEBATE CLAUSE

Respondents assert that the Speech or Debate Clause of the Constitution, Art. I, § 6,[17] is an absolute bar to petitioner's action. This Court has on four prior occasions—*Dombrowski* v. *Eastland*, 387 U.S. 82 (1967); *United States* v. *Johnson*, 383 U.S. 169 (1966); *Tenney* v. *Brandhove*, 341 U.S. 367 (1951); and *Kilbourn* v. *Thompson*, 103 U.S. 168 (1880)—been called upon to determine if allegedly unconstitutional action taken by legislators or legislative employees is insulated from judicial review by the Speech or Debate Clause. Both parties insist that their respective positions find support in these cases and tender for decision three distinct issues: (1) whether respondents in participating in the exclusion of Petitioner Powell were "acting in the sphere of legitimate legislative activity," *Tenney* v. *Brandhove*, *supra*, at 376; (2) assuming that respondents were so acting, does the fact that petitioners seek neither damages from any of the respondents nor a criminal prosecution lift the bar of the clause; [18] and (3) even if this action may not be maintained against a Congressman, may those respondents who are merely employees of the House plead the bar of the clause. We find it necessary to treat only the last of these issues.

The Speech of Debate Clause, adopted by the Constitutional Convention without debate or opposition,[19] finds its roots in the conflict between Parliament and the Crown culminating in the Glorious Revolution of 1688 and the English Bill of Rights of 1689.[20] Drawing upon this history, we concluded in *United States* v. *Johnson*, *supra*, at 181, that the purpose of this clause was "to prevent intimidation [of legislators] by the executive and accountability before a possibly hostile judiciary." Although the clause sprung from a fear of seditious libel actions instituted by Crown to punish unfavorable speeches made in Parliament,[21] we have held that it would be a "narrow view" to confine the protection of the Speech or Debate Clause to words spoken in debate. Committee reports, resolutions, and the act of voting are equally covered, as are "things generally done in a session of the House by one of its members in relation to the business before it." *Kilbourn* v. *Thompson*, *supra*, at 204. Furthermore, the clause provides not only a defense on the merits but also protects a legislator from the burden of defending himself. *Dombrowski* v. *Eastland*, *supra*, at 85; see *Tenney* v. *Brandhove*, *supra*, at 377.

Our cases make it clear that the legislative immunity created by the Speech or Debate Clause performs an important function in representative government. It insures that legislators are free to represent the interests of their constituents without fear that they will be later called to task in the courts for that representation. Thus, in *Tenney* v. *Brandhove*, *supra*, at 373, the Court quoted the writings of James Wilson as illuminating the reason for legislative immunity: "In order to enable and encourage a representative of the publick to discharge his publick trust with firmness and success, it is indispensably necessary, that he should enjoy the fullest liberty of speech, and that he should be protected from the resentment of every one, however powerful, to whom the exercise of the liberty may occasion offense." [22]

Legislative immunity does not, of course, bar all judicial review of legislative acts. That issue was settled by implication as early as 1803, see *Marbury* v. *Madison*, 1 Cranch 137, and expressly in *Kilbourn* v. *Thompson*, the first of this Court's cases interpreting the reach of the Speech or Debate Clause. Challenged in *Kilbourn* was the constitutionality of a House resolution ordering the arrest and imprisonment of a recalcitrant witness who had refused to respond to a subpoena issued by a House investigating committee. While holding that the Speech or Debate Clause barred Kilbourn's action for false imprisonment brought against several members of the House, the Court nevertheless reached the merits of Kilbourn's attack and decided that, since the House had no power to punish for contempt, Kilbourn's imprisonment pursuant to the resolution was unconstitutional. It therefore allowed Kilbourn to bring his false imprisonment action against Thompson, the House's Sergeant-at-Arms, who had executed the warrant for Kilbourn's arrest.

The Court first articulated in *Kilbourn* and followed in *Dombrowski* v. *Eastland* [23] the doctrine that, although an action against a Congressman may be barred by the Speech or Debate Clause, legislative employees who participated in the unconstitutional activity are responsible for their acts. Despite the fact that petitioners brought this suit against several House employees—the Sergeant-at-Arms, the Doorkeeper and the Clerk—as well as several Congressmen, respondents argue that *Kilbourn* and *Dombrowski* are distinguishable. Conceding that in *Kilbourn* the presence of the Sergeant-at-Arms and in *Dombrowski* the presence of a congressional subcommittee counsel as defendants in the

Footnotes at end of article.

litigation allowed judicial review of the challenged congressional action, respondents urge that both cases concerned an affirmative act performed by the employee outside the House having a direct effect upon a private citizen. Here, they continue, the relief sought relates to actions taken by House agents solely within the House. Alternatively, respondents insist that Kilbourn and Dombrowski prayed for damages while Petitioner Powell asks that the Sergeant-at-Arms disburse funds, an assertedly greater interference with the legislative process. We reject the proffered distinctions.

That House employees are acting pursuant to express orders of the House does not bar judicial review of the constitutionality of the underlying legislative decision. *Kilbourn* decisively settles this question, since the Sergeant-at-Arms was held liable for false imprisonment even though he did nothing more than execute the House resolution that Kilbourn be arrested and imprisoned.[24] Respondents' suggestions thus ask us to distinguish between affirmative acts of House employees and situations in which the House orders its employees not to act or between actions for damages and claims for salary. We can find no basis in either the history of the Speech or Debate Clause or our cases for either distinction. The purpose of the protection afforded legislators is not to forestall judicial review of legislative action but to insure that legislators are not distracted from or hindered in the performance of their legislative tasks by being called into court to defend their actions. A legislator is no more or no less hindered or distracted by litigation against a legislative employee calling into question the employee's affirmative action than he would be by a lawsuit questioning the employee's failure to act. Nor is the distraction or hinderance increased because the claim is for salary rather than damages, or because the litigation questions action taken by the employee within rather than without the House. Freedom of legislative activity and the purposes of the Speech or Debate Clause are fully protected if legislators are relieved of the burden of defending themselves.[25] In *Kilbourn* and *Dombrowski* we thus dismissed the action against members of Congress but did not regard the Speech or Debate Clause as a bar to reviewing the merits of the challenged congressional action since congressional employees were also sued. Similarly, this action may be dismissed against the Congressmen since petitioners are entitled to maintain their action against House employees and to judicial review of the propriety of the decision to exclude Petitioner Powell.[26] As was said in *Kilbourn*, in language which time has not dimmed:

"Especially is it competent and proper for this court to consider whether its [the legislature's] proceedings are in conformity with the Constitution and laws, because, living under a written constitution, no branch or department of the government is supreme; and it is the province and duty of the judicial department to determine in cases regularly brought before them, whether the powers of any branch of the government, and even those of the legislature in the enactment of laws, have been exercised in conformity to the Constitution; and if they have not, to treat, their acts as null and void." 103 U.S., at 199.

IV. EXCLUSION OR EXPULSION

The resolution excluding Petitioner Powell was adopted by a vote in excess of two-thirds of the 434 Members of Congress—307 to 116. 113 Cong. Res. 1956–1957 (daily ed. March 1, 1967). Article I, § 5, grants the House authority to expel a member "with the Concurrence of two thirds."[27] Respondents assert that the House may expel a member for any reason whatsoever and that, since a two-thirds vote was obtained, the procedure by which Powell was denied his seat in the 90th Congress should be regarded as an expulsion not an exclusion. Cautioning us not to exalt form over substance, respondents quote from the concurring opinion of Judge McGowan in the court below:

"Appellant Powell's cause of action for a judicially compelled seating thus boils down, in my view, to the narrow issue of whether a member found by his colleagues . . . to have engaged in official misconduct must, because of the accidents of timing, be formally admitted before he can be either investigated or expelled. The sponsor of the motion to exclude stated on the floor that he was proceeding on the theory that the power to expel included the power to exclude, provided a ⅔ vote was forthcoming. It was. Therefore, success for Mr. Powell on the merits would mean that the District Court must admonish the House that it is form, not substance, that should govern in great affairs, and accordingly command the House members to act out a charade." 129 U.S. App. D.C., at 383–384, 395 F. 2d, at 606–607.

Although respondents repeatedly urge this Court not to speculate as to the reasons for Powell's exclusion, their attempt to equate exclusion with expulsion would require a similar speculation that the House would have voted to expel Powell had it been faced with that question. Powell had not been seated at the time House Resolution 278 was debated and passed. After a motion to bring the Select Committee's proposed resolution to an immediate vote had been defeated, an amendemnt was offered which mandated Powell's exclusion.[28] Mr. Celler, Chairman of the Select Committee, then posed a parliamentary inquiry to determine whether a two-thirds vote was necessary to pass the resolution if so amended "in the sense that it might amount to an expulsion." 113 Cong. Rec. 1942 (daily ed., March 1, 1967). The Speaker replied that "action by a majority vote would be in accordance with the rules." *Ibid.* Had the amendment been regarded as an attempt to expel Powell, a two-thirds vote would have been constitutionally required. The Speaker ruled that the House was voting to exclude Powell, and we will not speculate what the result might have been if Powell had been seated and expulsion proceedings subsequently instituted.

Nor is the distinction between exclusion and expulsion merely one of form. The misconduct for which Powell was charged occurred prior to the convening of the 90th Congress. On several occasions the House has debated whether a member can be expelled for actions taken during a prior Congress and the House's own manual of procedure applicable in the 90th Congress states that "both Houses have distrusted their power to punish in such cases." Rules of the House of Representatives, H. R. Doc. No. 529, 89th Cong., 2d Sess., 25 (1967); see G. Galloway, History of the House of Representatives 32 (1961). The House rules manual reflects positions taken by prior Congresses. For example, the report of the Select Committee appointed to consider the expulsion of John W. Langley states unequivocally that the House will not expel a member for misconduct committed during an earlier Congress.

"[I]t must be said that with practical uniformity the precedents in such cases are to the effect that the House will not expel a Member for reprehensible action prior to his election as a Member, not even for conviction for an offense. On May 23, 1884, Speaker Carlisle decided that the House had no right to punish a Member for any offense alleged to have been committed previous to the time when he was elected a Member, and added, 'That has been so frequently decided in the House that it is no longer a matter of dispute.'" H. R. Rep. No. 30, 69th Cong., 1st Sess., 1–2 (1925).[29]

Members of the House having expressed a belief that such strictures apply to its own power to expel, we will not assume that two-thirds of its members would have expelled Powell for his prior conduct had the Speaker announced that House Resolution 278 was for expulsion rather than exclusion.[30]

Finally, the proceedings which culminated in Powell's exclusion cast considerable doubt upon respondent's assumption that the two-thirds vote necessary to expel would have been mustered. These proceedings have been succinctly described by Congressman Eckhardt.

"The House voted 202 votes for the previous question[31] leading toward the adoption of the [Select] Committee report. It voted 222 votes against the previous question, opening the floor for the Curtis Amendment which ultimately excluded Powell.

"Upon adoption of the Curtis Amendment, the vote again fell short of two-thirds, being 248 yeas to 176 nays. Only on the final vote, adopting the Resolution as amended, was more than a two-thirds vote obtained, the vote being 307 yeas to 116 nays. On this last vote, as a practical matter, members who would not have denied Powell a seat if they were given the choice to punish him had to cast an aye vote or else record themselves as opposed to the only punishment that was likely to come before the House. Had the matter come up through the processes of expulsion, it appears that the two-thirds vote would have failed, and then members would have been able to apply a lesser penalty."[32]

We need express no opinion as to the accuracy of Congressman Eckhardt's prediction that expulsion proceedings would have produced a different result. However, the House's own views of the extent of its power to expel combined with the Congressman's analysis counsel that exclusion and expulsion are not fungible proceedings. The Speaker ruled that House Resolution 278 contemplated an exclusion proceeding. We must decline respondents' suggestion that we overrule the Speaker and hold that, although the House manifested an intent to exclude Powell, its action should be tested by whatever standards may govern an expulsion.

V. SUBJECT MATTER JURISDICTION

As we pointed out in *Baker* v. *Carr*, 369 U.S. 186, 198 (1962), there is a significant difference between determining whether a federal court has "jurisdiction over the subject matter" and determining whether a cause over which a court has subject matter jurisdiction is "justiciable." The District Court determined that "to decide this case on the merits . . . would constitute a clear violation of the doctrine of separation of powers" and then dismissed the complaint "for want of jurisdiction of the subject matter." *Powell* v. *McCormack*, 266 F. Supp. 354, 359, 360 (D. C. D. C. 1967). However, as the Court of Appeals correctly recognized, the doctrine of separation of powers is more properly considered in determining whether the case is "justiciable." We agree with the unanimous conclusion of the Court of Appeals that the District Court has jurisdiction over the subject matter of this case.[33] However, for reasons set forth in Part VI, *infra*, we disagree with the Court of Appeals' conclusion that this case is not justiciable.

In *Baker* v. *Carr*, *supra*, we noted that a federal district court lacks jurisdiction over the subject matter (1) if the cause does not "arise under" the Federal Constitution, laws or treaties (or fall within one of the other enumerated categories of Article III); or (2) if it is not a "case or controversy" within the meaning of that phrase in Article III; or (3) if the cause is not one described by any jurisdictional statute. And, as in *Baker* v. *Carr*, *supra*, our determination (see Part VI, § B (1) *infra*) that this cause presents

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no nonjusticiable "political question" disposes of respondents' contentions [34] that this cause is not a "case or controversy." [35]

Respondents first contend that this is not a case "arising under" the Constitution within the meaning of Article III. They emphasize that Art. I, § 5, assigns to each house of Congress the power to judge the elections and qualifications of its own members and to punish its members for disorderly behavior. Respondents also note that under Art. I, § 3, the Senate has the "sole power" to try all impeachments. Respondents argue that these delegations (to "judge," to "punish," and to "try") to the Legislative Branch are explicit grants of "judicial power" to the Congress and constitute specific exceptions to the general mandate of Article III that the "judicial power" shall be vested in the federal courts. Thus, respondents maintain, the "power conferred on the courts by article III does not authorize this Court to do anything more than declare its lack of jurisdiction to proceed." [36]

We reject this contention. Article III, § 1, provides the "judicial Power . . . shall be vested in one Supreme Court, and in such inferior Courts as the Congress may . . . establish." Further, § 2 mandates that the "judicial Power shall extend to all Cases . . . arising under this Constitution. . . ." It has long been held that a suit "arises under" the Constitution if petitioners' claims "will be sustained if the Constitution . . . [is] given one construction and will be defeated if it [is] given another." [37] *Bell* v. *Hood*, 327 U.S. 678, 685 (1946). See *King County* v. *Seattle School District No. 1*, 263 U.S. 361, 363–364 (1923). Cf. *Osborn* v. *Bank of the United States*, 22 U.S. (9 Wheat.). 738 (1824). See generally, C. Wright, Federal Courts 48–52 (1963). Thus, this case clearly is one "arising under" the Constitution as the Court has interpreted that phrase. Any bar to federal courts reviewing the judgments made by the House or Senate in excluding a member arises from the allocation of powers between the two branches of the Federal Government (a question of justiciability), and not from the petitioners' failure to state a claim based on federal law.

Respondents next contend that the Court of Appeals erred in ruling that petitioners' suit is "authorized by a jurisdictional statute," *i.e.*, 28 U.S.C. §1331(a) (1964 ed.). Section 1331 (a) provides that district courts shall have jurisdiction in "all civil actions wherein the matter in controversy . . . arises under the Constitution . . . ." Respondents urge that even though a case may "arise under the Constitution" for purposes of Article III, it does not necessarily "arise under the Constitution" for purposes of § 1331 (a). Although they recognize there is little legislative history concerning the enactment of § 1331 (a), respondents argue that the history of the period when the section was first enacted indicates that the drafters did not intend to include suits questioning the exclusion of Congressmen in this grant of "federal question" jurisdiction.

Respondents claim that the passage of the Force Act [38] in 1870 lends support to their interpretation of the intended scope of § 1331. The Force Act gives the district courts jurisdiction over "any civil action to recover possession of any office . . . wherein it appears the sole question . . . arises out of the denial of the right to vote . . . on account of race, color, or previous condition of servitude." However, the Act specifically excludes suits concerning the office of Congressman. Respondents maintain that this exclusion demonstrates Congress' intention to prohibit federal courts from entertaining suits regarding the seating of Congressmen.

We have noted that the grant of jurisdiction in § 1331(a), while made in the language used in Article III, is not in all respects coextensive with the potential for federal jurisdiction found in Article III. See *Zwickler* v. *Koota*, 389 U.S. 241, 246, n. 8 (1967). Nevertheless, it has generally been recognized that the intent of the drafters was to provide a broad jurisdictional grant to the federal courts. See, *e.g.*, P. Mishkin, The Federal "Question" in the District Courts, 53 Col. L. Rev. 157, 160 (1953); J. Chadbourn and A. Levin, Original Jurisdiction of Federal Questions, 90 U. Pa. L. Rev. 639, 644–645 (1942). And, as noted above, the resolution of this case depends directly on construction of the Constitution. The Court has consistently held such suits are authorized by the statute. *Bell* v. *Hood*, *supra*; *King County* v. *Seattle School District No. 1*, *supra*. See, *e.g.*, *Gully* v. *First Nat'l Bank in Meridian*, 299 U.S. 109, 112 (1936); *The Fair* v. *Kohler Die & Specialty Co.*, 288 U.S. 22, 25 (1913).

As respondents recognize, there is nothing in the wording or legislative history of § 1331 or in the decisions of this Court which would indicate that there is any basis for the interpretation they would give that section. Nor do we think the passage of the Force Act indicates that § 1331 does not confer jurisdiction in this case. The Force Act is limited to election challenges where a denial of the right to vote in violation of the Fifteenth Amendment is alleged. See 28 U.S.C. § 1344 (1964 ed.). Further, the Act was passed five years before the original version of § 1331 was enacted. While it might be inferred that Congress intended to give each House the exclusive power to decide congressional election challenges,[39] there is absolutely no indication that the passage of this Act evidences an intention to impose other restrictions on the broad grant of jurisdiction in § 1331.

VI. JUSTICIABILITY

Having concluded that the Court of Appeals correctly ruled that the District Court had jurisdiction over the subject matter, we turn to the question whether the case is justiciable. Two determinations must be made in this regard. First, we must decide whether the claim presented and the relief sought are of the type which admit of judicial resolution. Second, we must determine whether the structure of the Federal Government renders the issue presented a "political question"—that is, a question which is not justiciable in federal court because of the separation of powers provided by the Constitution.

A. General considerations

In deciding generally whether a claim is justiciable, a court must determine whether "the duty asserted can be judicially identified and its breach judicially determined, and whether protection for the right asserted can be judicially molded." *Baker* v. *Carr*, *supra*, at 198. Respondents do not seriously contend that the duty asserted and its alleged breach cannot be judicially determined. If petitioners are correct, the House had a duty to seat Powell once it determined he met the standing requirements set forth in the Constitution. It is undisputed that he met those requirements and that he was nevertheless excluded.

Respondents do maintain, however, that this case not justiciable because, they assert, it is impossible for a federal court to "mold effective relief for resolving this case." Respondents emphasize that petitioners asked for coercive relief against the officers of the House, and, they contend, federal courts cannot issue mandamus or injunctions compelling officers or employes of the House to perform specific official acts. Respondents rely primarily on the Speech or Debate Clause to support this contention.

We need express no opinion about the appropriateness of coercive relief in this case, for petitioners sought a declaratory judgment, a form of relief the District Court could have issued. The Declaratory Judgment Act, 28 U. S. C. § 2201 (1964 ed.), provides that a district court may "declare the rights . . . of any interested party . . . whether or not further relief is or could be sought." The availability of declaratory relief depends on whether there is a live dispute between the parties, *Golden* v. *Zwickler*, 394 U. S. 103 (1969), and a request for a declaratory relief may be considered independently of whether other forms of relief are appropriate. See *United Public Workers* v. *Mitchell*, 330 U. S. 75, 93 (1947); 6A J. Moore, Federal Practice ¶ 57.08(3) (2d ed., 1966); cf. *United States* v. *California*, 332 U. S. 19, 25–26 (1947). We thus conclude that in terms of the general criteria of justiciability, this case is justiciable.

B. Political question doctrine

Textually Demonstrable Constitutional Commitment

Respondents maintain that even if this case is otherwise justiciable, it presents only a political question. It is well-established that the federal courts will not adjudicate political questions. See, *e.g.*, *Coleman* v. *Miller*, 307 U. S. 433 (1939); *Oetjen* v. *Central Leather Co.*, 246 U. S. 297 (1918). In *Baker* v. *Carr*, *supra*, we noted that political questions are not justiciable primarily because of the separation of powers within the Federal Government. After reviewing our decisions in this area, we concluded that on the surface of any case held to involve a political question was a least one of the following formulations:

"A textually demonstrable constitutional commitment of the issue to a co-ordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determinaton of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question." *Id.*, at 217.

Respondents' first contention is that this case presents a political question because under Art. I, § 5, there has been a "textually demonstrable constitutional commitment" to the House of the "adjudicatory power" to determine Powell's qualifications. Thus it is argued that the House, and the House alone, has power to determine who is qualified to be a member.[40]

In order to determine whether there has been a textual commitment to a co-ordinate department of the Government, we must interpret the Constitution. In other words, we must first determine what power the Constitution confers upon the House through Art. I, § 5, before we can determine to what extent, if any, the exercise of that power is subject to judicial review. Respondents maintain that the House has broad power under § 5, and, they argue, the House may determine which are the qualifications necessary for membership. On the other hand, petitioners allege that the Constitution provides that an elected representative may be denied his seat only if the House finds he does not meet one of the standing qualifications expressly prescribed by the Constitution.

If examination of § 5 disclosed that the Constitution gives the House judicially unreviewable power to set qualifications for membership and to judge whether prospective members meet those qualifications, further review of the House determination might well be barred by the political question doctrine. On the other hand, if the Constitution gives the House power to judge only whether elected members possess the three standing qualifications set forth in the Constitution,[41] further consideration would be necessary to determine whether

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any of the other formulations of the political question doctrine are "inextricable from the case at bar." [42] *Baker* v. *Carr*, *supra*, at 217.

In other words, whether there is a "textually demonstrable constitutional commitment of the issue to a coordinate political department of government" and what is the scope of such commitment are questions we must resolve for the first time in this case.[43] For, as we pointed out in *Baker* v. *Carr*, *supra*, "[d]eciding whether a matter has in any measure been committed by the Constitution to another branch of government, or whether the action of that branch exceeds whatever authority has been committed, is itself a delicate exercise in constitutional interpretation and is the responsibility of this Court as ultimate interpreter of the Constitution." *Id.*, at 211.

In order to determine the scope of any "textual commitment" under Art. I, § 5, we necessarily must determine the meaning of the phrase to "judge the qualifications of its members." Petitioners argue that the records of the debates during the Constitutional Convention, available commentary from the post-Convention, pre-ratification period, and early congressional applications of Art. I, § 5, support their construction of the section. Respondents insist, however, that a careful examination of the pre-Convention practices of the English Parliament and American colonial assemblies demonstrates that by 1787, a legislature's power to judge the qualifications of its members was generally understood to encompass exclusion or expulsion on the ground that an individual's character or past conduct rendered him unfit to serve. When the Constitution and the debates over its adoption are thus viewed in historical perspective, argue respondents, it becomes clear that the "qualifications" expressly set forth in the Constitution were not meant to limit the long recognized legislative power to exclude or expel at will, but merely to establish "standing incapacities," which could be altered only by a constitutional amendment. Our examination of the relevant historical materials leads us to the conclusion that petitioners are correct and that the Constitution leaves the House [44] without authority to exclude any person, duly elected by his constituents, who meets all the requirements for membership expressly prescribed in the Constitution.

a. The Pre-Convention Precedents: Since our rejection of respondents' interpretation of § 5 results in significant measure from a disagreement with their historical analysis, we must consider the relevant historical antecedents in considerable detail. As do respondents, we begin with the English and colonial precedents.

The earliest English exclusion precedent appears to be a declaration by the House of Commons in 1553 "that Alex. Nowell, being Prebendary [*i.e.*, a clergyman] in Westminster, and thereby having voice in the Convocation House, cannot be a member of this House . . . ." J. Tanner, Tudor Constitutional Documents: 1485–1603, at 596 (2d ed. 1930). This decision, however, was consistent with a long-established tradition that clergy who participated in their own representative assemblies or convocations were ineligible for membership in the House of Commons.[45] See 1 E. Porritt, The Unreformed House of Commons 125 (1963); Taswell-Langmead's English Constitutional History 142–143 (11th ed. T. Plucknett 1960). The traditional ineligibility of clergymen was recognized as a standing incapacity.[46] See 1 Blackstone's Commentaries *175. Nowell's exclusion, therefore, is irrelevant to the present case, for petitioners concede—and we agree—that if Powell had not met one of the standing qualifications set forth in the Constitution, he could have been excluded under Art. I, § 5. The earliest colonial exclusions also fail to support respondents' theory.[47]

Respondents' remaining 16th and 17th century English precedents all are cases of expulsion, although some were for misdeeds not encompassed within recognized standing incapacities existing either at the time of the expulsions or at the time the Constitution was drafted in 1787.[48] Although these early expulsion orders occasionally contained statements suggesting that the individual expelled was thereafter ineligible for re-election, at least for the duration of the Parliament from which he was expelled,[49] there is no indication that any were re-elected and thereafter excluded. Respondents' colonial precedents during this period follow a similar pattern.[50]

Apparently the re-election of an expelled member first occurred in 1712. The House of Commons had expelled Robert Walpole for receiving kickbacks for contracts relating to "foraging the Troops," 17 H. C. Jour. 28, and committed him to the Tower. Nevertheless, two months later he was re-elected. The House thereupon resolved "[t]hat Robert Walpole, Esquire, having been, this Session of Parliament, committed a Prisoner to the *Tower* of *London*, and expelled [from] this House, . . . is incapable of being elected a Member to serve *in this present Parliament* . . ." *Id.*, at 128. (Emphasis added in part.) A new election was ordered, and Walpole was not re-elected. At least two similar exclusions after an initial expulsion were effected in the American colonies during the first half of the 18th century.[51]

Respondents urge that the Walpole case provides strong support for their conclusion that the pre-Convention English and colonial practice was that members-elect could be excluded for their prior misdeeds at the sole discretion of the legislative body to which they had been elected. However, this conclusion overlooks an important limiting characteristic of the Walpole case and of both the colonial exclusion cases on which respondents rely: the excluded member had been previously expelled. Moreover, Walpole was excluded only for the remainder of the Parliament from which he had been expelled. "The theory seems to have been that expulsion lasted as long as the parliament . . ." Taswell-Langmead's, *supra* at 584, n. 99. Accord, 1 Blackstone's Commentaries *176. Thus, Walpole's exclusion justifies only the proposition that an expulsion lasted for the remainder of the particular Parliament, and the expelled member was therefore subject to subsequent exclusion if reelected prior to the next general election. The two colonial cases arguably support a somewhat broader principle, *i.e.*, that the assembly could permanently expel. Apparently the colonies did not consistently adhere to the theory that an expulsion lasted only until the election of a new asesmbly. M. Clarke, Parliamentary Privilege in the American Colonies 196–202 (1943).[52] Clearly, however, none of these cases supports respondents' contention that by the 18th century the English Parliament and colonial assemblies had assumed absolute discretion to exclude any member-elect they deemed unfit to serve. Rather, they seem to demonstrate that a member could be excluded only if he had first been expelled.

Even if these cases could be construed to support respondents' contention, their precedential value was nullified prior to the Constitutional Convention. By 1782, after a long struggle, the arbitrary exercise of the power to exclude was unequivocally repudiated by a House of Commons resolution which ended the most notorious English election dispute of the 18th century—the John Wilkes case. While serving as a member of Parliament in 1763, Wilkes published an attack on a recent peace treaty with France, calling it a product of bribery and condemning the Crown's ministers as " 'the tools of despotism and corruption.' " R. Postgate, That Devil Wilkes 53 (1929). Wilkes and others who were involved with the publication in which the attack appeared were arrested.[53] Prior to Wilkes' trial, the House of Commons expelled him for publishing "a false, scandalous, and seditious libel." 15 Parl. Hist. Eng. 1393 (1764). Wilkes then fled to France and was subsequently sentenced to exile. 9 L. Gipson, The British Empire Before the American Revolution 37 (1956).

Wilkes returned to England in 1768, the same year in which the Parliament from which he had been expelled was dissolved. He was elected to the next Parliament, and he then surrendered himself to the Court of King's Bench. Wilkes was convicted of seditious libel and sentenced to 22 months' imprisonment. The new Parliament declared him ineligible for membership and ordered that he be "expelled this House." 16 Parl. Hist. Eng. 545 (1769). Although Wilkes was re-elected to fill the vacant seat three times, each time the same Parliament declared him ineligible and refused to seat him. See 11 L. Gipson, *Supra*, at 207–215.[54]

Wilkes was released from prison in 1770 and was again elected to Parliament in 1774. For the next several years, he unsuccessfully campaigned to have the resolutions expelling him and declaring him incapable of reelection expunged from the record. Finally, in 1782, the House of Commons voted to expunge them, resolving that the prior House actions were "subversive of the Rights of the Whole Body of Electors of this Kingdom." 22 Parl. Hist. Eng. 1411 (1782).

With the successful resolution of Wilkes' long and bitter struggle for the right of the British electorate to be represented by men of their own choice, it is evident that, on the eve of the Constitutional Convention, English precedent stood for the proposition that "the law of the land had regulated the qualifications of members to serve in parliament" and those qualifications were "not occasional but fixed." 16 Parl. Hist. Eng. 589, 590 (1769). Certainly English practice did not support, nor had it ever supported, respondents' assertion that the power to judge qualifications was generally understood to encompass the right to exclude members-elect for general misconduct not within standing qualifications. With the repudiation in 1782 of the only two precedents for excluding a member-elect who had been previously expelled,[55] it appears that the House of Commons also repudiated any "control over the eligibility of candidates, except in the administration of the laws which define their [standing] qualifications." May's Parliamentary Practice 66 (13th ed. Webster 1924). See Taswell-Langmead's supra, at 585.[56]

The resolution of the Wilkes case similarly undermined the precedential value of the earlier colonial exclusions, for the principles upon which they had been based were repudiated by the very body the colonial assemblies sought to imitate and whose precedents they generally followed. See M. Clarke, *supra*, at 54, 59–60, 196. Thus, in 1784 the Council of Censors of the Pennsylvania Assembly [57] denounced the prior expulsion of an unnamed assemblyman, ruling that his expulsion had not been effected in conformity with the recently enacted Pennsylvania Constitution.[58] In the course of its report, the Council denounced by name the Parliamentary exclusions of both Walpole and Wilkes, stating that they "reflected dishonor on none but the authors of these violences." Pennsylvania Convention Proceedings: 1776–1790, at 89 (1825).

Wilkes' struggle and his ultimate victory had a significant impact in the American colonies. His advocacy of libertarian causes [59] and his pursuit of the right to be seated in Parliament became a *cause celebre* for the colonists. "[T]he cry of 'Wilkies and Liberty' echoed loudly across the Atlantic Ocean as wide publicity was given to every step of Wilke's public career in the colonial press. . . . The reaction in America took on sig-

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nificant proportions. Colonials tended to identify their cause with that of Wilkes. They saw him as a popular hero and a martyr to the struggle for liberty. . . . They named towns, counties, and even children in his honour." 11 L. Gipson, *supra*, at 222.[60] It is within this historical context that we must examine the Convention debates in 1787, just five years after Wilkes' final victory.

b. Convention Debates: Relying heavily on Professor Charles Warren's analysis [61] of the Convention debates, petitioners argue that the proceedings manifest the Framers' unequivocal intention to deny either branch of Congress the authority to add to or otherwise vary the membership qualifications expressly set forth in the Constitution. We do not completely agree, for the debates are subject to other interpretations. However, we have concluded that the records of the debates, viewed in the context of the bitter struggle for the right to freely choose representatives which had recently concluded in England and in light of the distinction the Framers made between the power to expel and the power to exclude, indicate that petitioners' ultimate conclusion is correct.

The Convention opened in late May 1787. By the end of July, the delegates adopted, with a minimum of debate, age requirements for membership in both the Senate and the House. The Convention then appointed a Committee of Detail to draft a constitution incorporating these and other resolutions adopted during the preceding months. Two days after the Committee was appointed, George Mason, of Virginia, moved that the Committee consider a clause " 'requiring certain qualifications of landed property & citizenship' " and disqualifying from membership in Congress persons who had unsettled accounts or who were indebted to the United States. 2 The Records of the Federal Convention of 1787, at 121 (M. Farrand rev. ed. 1966) (hereinafter cited as Farrand). A vigorous debate ensued. Charles Pinckney and General Charles C. Pinckney, both of South Carolina, moved to extend these incapacities to both the judicial and executive branches of the new government. But John Dickinson, of Delaware, opposed the inclusion of any statement of qualifications in the Constitution. He argued that it would be "impossible to make a complete one, and a partial one would by implication tie up the hands of the Legislature from supplying the omissions." *Id.*, at 123.[62] Dickinson's argument was rejected; and, after eliminating the disqualification of debtors and the limitation to "landed" property, the Convention adopted Mason's proposal to instruct the Committee of Detail to draft a property qualification. *Id.*, at 116–117.

The Committee reported in early August, proposing no change in the age requirement; however, it did recommend adding citizenship and residency requirements for membership. After first debating what the precise requirements should be, on August 8, 1787, the delegates unanimously adopted the three qualifications embodied in Art I, § 2. *Id.*, at 213.[63]

On August 10, the Convention considered the Committee of Detail's proposal that the "Legislature of the United States shall have the authority to establish such uniform qualifications of the members of each House, with regard to property, as to the said Legislature shall seem expedient." *Id.*, at 179. The debate on this proposal discloses much about the views of the Framers on the issue of qualifications. For example, James Madison urged its rejection, stating that the proposal would vest "an improper & dangerous power in the Legislature. The qualifications of electors and elected were fundamental articles in a Republican Govt. and ought to be fixed by the Constitution. If the Legislature could regulate those of either, it can by degrees subvert the Constitution. A Republic may be converted into an aristocracy or oligarchy as well by limiting the number capable of being elected, as the number authorized to elect. . . . It was a power also, which might be made subservient to the views of one faction agst. another. Qualifications founded on artificial distinctions may be devised, by the stronger in order to keep out partisans of a [weaker] faction." *Id.*, at 249–250.[64]

Significantly, Madison's argument was not aimed at the imposition of a property qualification as such, but rather at the delegation to the Congress of the discretionary power to establish any qualifications. The parallel between Madison's arguments and those made in Wilkes' behalf is striking.[65]

In view of what followed Madison's speech, it appears that on this critical day the Framers were facing and then rejecting the possibility that the legislature would have power to usurp the "indisputable right of the people to return whom they thought proper" [66] to the legislature. Oliver Ellsworth, of Connecticut, noted that a legislative power to establish property qualifications was exceptional and "dangerous because it would be much more liable to abuse." *Id.*, at 250. Gouverneur Morris then moved to strike "with regard to property" from the Committee's proposal. His intention was "to leave the Legislature entirely at large." *Ibid.* Hugh Williamson, of North Carolina, expressed concern that if a majority of the legislature should happen to be "composed of any particular description of men, of lawyers for example, . . . the future elections might be secured to their own body." *Ibid.*[67] Mr. Madison then referred to the British Parliament's assumption of the power to regulate the qualifications of both electors and the elected and noted that "the abuse they had made of it was a lesson worthy of our attention. They had made the changes in both cases subservient to their own views or to the views of political or Religious parties." *Ibid.*[68] Shortly thereafter, the Convention rejected both Gouveneur Morris' motion and the Committee's proposal. Later the same day, the Convention adopted without debate the provision authorizing each House "to be the judge of the . . . qualifications of its own members." *Id.*, at 254.

One other decision made the same day is very important to determining the meaning of Art. I, § 5. When the delegates reached the Committee of Detail's proposal to empower each House to expel its members, Madison "observed that the right of expulsion . . . was too important to be exercised by a bare majority of a quorum: and in emergencies one faction might be dangerously abused." *Id.*, at 254. He therefore moved that "with the concurrence of two-thirds" be inserted. With the exception of one State, whose delegation was divided, the motion was unanimously approved without debate, although Gouverneur Morris noted his opposition. The importance of this decision cannot be over-emphasized. None of the parties to this suit disputes that prior to 1787 the legislative powers to judge qualifications and to expel were exercised by a majority vote. Indeed, without exception, the English and colonial antecedents to Art. I, § 5, cl. 1 and 2, support this conclusion. Thus, the Convention's decision to increase the vote required to expel, because that power was "too important to be exercised by a bare majority," while at the same time not similarly restricting the power to judge qualifications, is compelling evidence that they considered the latter already limited by the standing qualifications previously adopted.[69]

Respondents urge, however, that these events must be considered in light of what they regard as a very significant change made in Art. I, § 2, cl. 2, by the Committee of Style. When the Committee of Detail reported the provision to the Convention, it read:

"Every member of the House of Representatives shall be of the age of twenty-five years; shall have been a citizen of [in] the United States for at least three years before his election; and shall be, at the time of his election, a resident of the State in which he shall be chosen." *Id.*, at 178.

However, as finally drafted by the Committee of Style, these qualifications were stated in their present negative form. Respondents note that there are no records of the "deliberations" of the Committee of Style. Nevertheless, they speculate that this particular change was designed to make the provision correspond to the form used by Blackstone in listing the "standing incapacities" for membership in the House of Commons. See 1 Blackstone's Commentaries *175–176. Blackstone, who was an apologist for the anti-Wilkes forces in Parliament,[70] had added to his Commentaries after Wilkes' exclusion the assertion that individuals who were not ineligible for the Commons under the standing incapacities could still be denied their seat if the Commons deemed them unfit for other reasons.[71] Since Blackstone's Commentaries were widely circulated in the Colonies, respondents further speculate that the Committee of Style rephrased the qualifications provision in the negative to clarify the delegates' intention "only to prescribe the standing incapacities without imposing any other limit on the historic power of each house to judge qualifications on a case by case basis." [72]

Respondents' argument is inherently weak, however, because it assumes that legislative bodies historically possessed the power to judge qualifications on a case-by-case basis. As noted above, the basis for that conclusion was the Walpole and Wilkes cases, which by the time of the Convention, had been denounced by the House of Commons and repudiated by at least one State government. Moreover, respondents' argument misrepresents the function of the Committee of Style. It was appointed only "to revise the style of and arrange the articles which had been agreed to . . ." 2 Farrand 553. "The Committee . . . had no authority from the Convention to make alterations of substance in the Constitutions voted by the Convention, nor did it purport to do so; and certainly the Convention had no belief . . . that any important change was, in fact, made in the provisions as to qualifications adopted by it on August 10." [73]

Petitioners also argue that the post-Convention debates over the Constitution's ratification support their interpretation of § 5. For example, they emphasize Hamilton's reply to the antifederalist charge that the new Constitution favored the wealthy and well-born:

"The truth is that there is no method of securing to the rich the preference apprehended but by prescribing qualifications of property either for those who may elect or be elected. But this forms no part of the power to be conferred upon the national government. Its authority would be expressly restricted to the regulation of the *times*, the *places*, the *manner* of elections. *The qualifications of the persons who may choose or be chosen, as has been remarked upon other occasions, are defined and fixed in the Constitution, and are unalterable by the legislature.*" The Federalist 371 (Mentor ed.). (Emphasis added in part.)

Madison had expressed similar views in an earlier essay,[74] and his arguments at the Convention leave no doubt about his agreement with Hamilton on this issue.

Respondents counter that Hamilton was actually addressing himself to criticism of Art. I, § 4, which authorizes Congress to regulate the times, places, and manner of electing members of Congress. They note that prominent antifederalists had argued that

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this power could be used to "confer on the rich and *well-born* all honours." Brutus No. IV, N.Y. Journal, Nov. 29, 1787, p. 7. (Emphasis in original.) Respondents' contention, however, ignores Hamilton's express reliance on the immutability of the qualifications set forth in the Constitution.[75]

The debates at the state conventions also demonstrate the Framers' understanding that the qualifications for members of Congress had been fixed in the Constitution. Before the New York convention, for example, Hamilton emphasized: "[T]he true principle of a republic is, that the people should choose whom they please to govern them. Representation is imperfect in proportion as the current of popular favor is checked. This great source of free government, popular election, should be perfectly pure, and the most unbounded liberty allowed." 2 Debates on the Federal Constitution 257 (J. Elliot ed. 1876) (hereinafter cited as Elliot's Debates).[76] In Virginia, where the Federalists faced powerful opposition by advocates of popular democracy, Wilson Carey Nicholas, a future member of both the House and Senate and later Governor of the State, met the arguments that the new Constitution violated democratic principles with the following interpretation of Art. I, § 2, cl. 2: "[A]s it respects the qualifications of the elected. It has ever been considered a great security to liberty, that very few should be excluded from the right of being chosen to the legislature. This Constitution has amply attended this idea. We find no qualifications required except those of age and residence which create a certainty of their judgment being matured, and of being attached to their state." 3 Elliot's Debates 8.

c. Post-Ratification: As clear as these statements appear, respondents dismiss them as "general statements . . . directed to other issues."[77] They suggest that far more relevant is Congress' own understanding of its power to judge qualifications as manifested in post-ratification exclusion cases. Unquestionably, both the House and Senate have excluded members-elect for reasons other than their failure to meet the Constitution's standing qualifications. For almost the first 100 years of its existence, however, Congress strictly limited its power to judge the qualifications of its members to those enumerated in the Constitution.

Congress was first confronted with the issue in 1807,[78] when the eligibility of William McCreery was challenged because he did not meet additional residency requirements imposed by the State of Maryland. In recommending that he be seated, the House Election Committee reasoned:

"The Committee proceeded to examine the Constitution with relation to the case submitted to them, and find that qualifications of members are therein determined, without reserving any authority to the State Legislatures to change, add to, or diminish those qualifications; and that, by that instrument, Congress is constituted the sole judge of the qualifications prescribed by it, and are obliged to decide agreeably to the Constitutional rules. . . ." 17 Annals of Cong. 871 (1807).

Lest there be any misunderstanding of the basis for the committee's recommendation, during the ensuing debate the chairman explained the principles by which the committee was governed:

"The Committee of Elections considered the qualifications of members to have been unalterably determined by the Federal Convention, unless changed by an authority equal to that which framed the Constitution at first; that neither the State nor the Federal Legislatures are vested with authority to add to those qualifications, so as to change them. . . . Congress, by the Federal Constitution, are not authorized to prescribe the qualifications of their own members, but they are authorized to judge of their qualifications; in doing so, however, they must be governed by the rules prescribed by the Federal Constitution, and by them only. These are the principles on which the Election Committee have made up their report and upon which their resolution is founded." *Id.*, at 872.

The chairman emphasized that the committee's narrow construction of the power of the House to judge qualifications was compelled by the "fundamental principle in a free government," *id.*, at 873, that restrictions upon the people to choose their own representatives must be limited to those "absolutely necessary for the safety of the society." *Id.*, at 874. At the conclusion of a lengthy debate, which tended to center on the more narrow issue of the power of the States to add to the standing qualifications set forth in the Constitution, the House agreed by a vote of 89 to 18 to seat Congressman McCreery. *Id.*, at 1237. See 1 A. Hinds, Precedents of the House of Representatives § 414 (1907) (hereinafter cited as Hinds).

There was no significant challenge to these principles for the next several decades.[79] They came under heavy attack, however, "during the stress of civil war [but initially] the House of Representatives declined to exercise the power [to exclude], even under circumstances of great provocation."[80] Rules of the House of Representatives, H.R. Doc. No. 529, 89th Cong., 2d Sess., § 12, at 7 (1967). The abandonment of such restraint, however, was among the casualties of the general upheaval produced in war's wake. In 1868, the House voted for the first time in its history to exclude a member-elect. It refused to seat two duly elected representatives for giving aid and comfort to the Confederacy. See 1 Hinds §§ 449–451.[81] "This change was produced by the North's bitter enmity toward those who failed to support the Union cause during the war, and was effected by the Radical Republican domination of Congress. It was a shift brought by the naked urgency of power and was given little doctrinal support." Comment, Legislative Exclusion: Julian Bond and Adam Clayton Powell, 35 U. Chi. L. Rev. 151, 157 (1967).[82] From that time until the present, congressional practice has been erratic;[83] and on the few occasions when a member-elect was excluded although he met all the qualifications set forth in the Constitution, there were frequently vigorous dissents.[84] Even the annotations to the official manual of procedure for the 90th Congress manifests doubt as to the House's power to exclude a member-elect who has met the constitutionally prescribed qualifications. See Rules of the House of Representatives, H.R. Doc No. 529, 89th Cong., 2d Sess., § 12, at 7–8 (1967).

Had these congressional exclusion precedents been more consistent, their precedential value still would be quite limited. See Note, the Power of a House of Congress to Judge the Qualifications of its Members, 81 Harv. L. Rev. 673, 679 (1968).[85] That an unconstitutional action has been taken before surely does not render that same action any less unconstitutional at a later date. Particularly in view of the Congress' own doubts in those few cases where it did exclude members-elect, we are not inclined to give its precedents controlling weight. The relevancy of prior exclusion cases is limited largely to the insight they afford in correctly ascertaining the draftsmen's intent. Obviously, therefore, the precedential value of these cases tends to increase in proportion to their proximity to the Convention in 1787. See *Myers* v. *United States*, 272 U.S. 52, 175 (1926). And, what evidence we have of Congress' early understanding confirms our conclusion that the House is without power to exclude any member-elect who meets the Constitution's requirements for membership.

d. Conclusion: Had the intent of the Framers emerged from these materials with less clarity, we would nevertheless have been compelled to resolve any ambiguity in favor of a narrow construction of the scope of Congress' power to exclude members-elect. A fundamental principle of our representative democracy is, in Hamilton's words, "that the people should choose whom they please to govern them." 2 Elliot's Debates 257. As Madison pointed out at the Convention, this principle is undermined as much by limiting whom the people can select as by limiting the franchise itself. In apparent agreement with this basic philosophy, the Convention adopted his suggestion limiting the power to expel. To allow essentially that same power to be exercised under the guise of judging qualifications, would be to ignore Madison's warning, borne out in the Wilkes case and some of Congress' own post-Civil War exclusion cases, against "vesting an improper & dangerous power in the Legislature." 2 Farrand 249. Moreover, it would effectively nullify the Convention's decision to require a two-third vote for expulsion. Unquestionably, Congress has an interest in preserving its institutional integrity, but in most cases that interest can be sufficiently safeguarded by the exercise of its power to punish its members for disorderly behavior and, in extreme cases, to expel a member with the concurrence of two-thirds. In short, both the intention of the Framers, to the extent it can be determined, and an examination of the basic principles of our democratic system persuade us that the Constitution does not vest in the Congress a discretionary power to deny membership by a majority vote.

For these reasons, we have concluded that Art. I, § 5, is at most a "textually demonstrable commitment" to Congress to judge only the qualifications expressly set forth in the Constitution. Therefore, the "textual commitment" formulation of the political question doctrine does not bar federal courts from adjudicating petitioners' claims.

2. Other considerations

Respondents' alternate contention is that the case presents a political question because judicial resolution of petitioners' claim would produce a "potentially embarrassing confrontation between coordinate branches" of the Federal Government. But, as our interpretation of Art. I, § 5, discloses, a determination of Petitioner Powell's right to sit woud require no more than an interpretation of the Constitution. Such a determination falls within the traditional role accorded courts to interpret the law, and does not involve a "lack of respect due [a] coordinate branch of government," nor does it involve an "initial policy determination of a kind clearly for nonjudicial discretion." *Baker* v. *Carr*, *supra*, at 217. Our system of government requires that federal courts on occasion interpret the Constitution in a manner at variance with the construction given the document by another branch. The alleged conflict[86] that such an adjudication may cause cannot justify the courts' avoiding their constitutional responsibility. See *United States* v. *Brown*, 381 U.S. 437, 462 (1965); *Youngstown Sheet and Tube Co.* v. *Sawyer*, 343 U.S. 579, 613–614 (1952) (Frankfurter, J., concurring); *Myers* v. *United States*, 272 U.S. 52, 293 (1926) (Brandeis, J., dissenting).

Nor are any of the other formulations of a political question "inextricable from the case at bar." *Baker* v. *Carr*, *supra*, at 217. Petitioners seek a determination that the House was without power to exclude Powell from the 90th Congress, which, we have seen, requires an interpretation of the Constitution—a determination for which clearly there are "judicially manageable standards." Finally, a judicial resolution of petitioners' claim will not result in "multifarious pronouncements by various departments on one question." For, as we noted in *Baker* v. *Carr*,

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supra, at 211, it is the responsibility of this Court to act as the ultimate interpreter of the Constitution. *Marbury* v. *Madison*, 1 Cranch 137 (1803). Thus, we conclude that petitioners' claim is not barred by the political question doctrine, and having determined that the claim is otherwise generally justiciable, we hold that the case is justiciable.

VII. CONCLUSION

To summarize, we have determined the following: (1) This case has not been mooted by Powell's seating in the 91st Congress. (2) Although this action should be dismissed against respondent Congressmen, it may be sustained against their agents. (3) The 90th Congress' denial of membership to Powell cannot be treated as an expulsion. (4) We have jurisdiction over the subject matter of this controversy. (5) The case is justiciable.

Further, analysis of the "textual commitment" under Art. I, § 5 (see Part VI, Section B(1)), has demonstrated that in judging the qualifications of its members Congress is limited to the standing qualifications prescribed in the Constitution. Respondents concede that Powell met these. Thus, there is no need to remand this case to determine whether he was entitled to be seated in the 90th Congress. Therefore, we hold that, since Adam Clayton Powell, Jr., was duly elected by the voters of the 18th Congressional District of New York and was not ineligible to serve under any provision of the Constitution, the House was without power to exclude him from its membership.

Petitioners seek additional forms of equitable relief, including mandamus for the release of Petitioner Powell's back pay. The propriety of such remedies, however, is more appropriately considered in the first instance by the courts below. Therefore, as to Respondents McCormack, Albert, Ford, Celler, and Moore, the judgment of the Court of Appeals for the District of Columbia Circuit is affirmed. As to Respondents Jennings, Johnson, and Miller, the judgment of the Court of Appeals for the District of Columbia Circuit is reversed and the case is remanded to the United States District Court for the District of Columbia with instructions to enter a declaratory judgment and for further proceedings consistent with this opinion.

It is so ordered.

FOOTNOTES

[1] Powell requested that he be given (1) notice of the charges pending against him, including a bill of particulars as to any accuser; (2) the opportunity to confront any accuser, to attend all committee sessions where evidence was given, and the right to cross-examine all witnesses; (3) public hearings; (4) the right to have the Select Committee issue its process to summon witnesses for his defense; (5) and a transcript of every hearing. Hearings on H.R. Res. No. 1 before Select Committee Pursuant to H.R. Res. No. 1, 90th Cong., 1st Sess., 54 (1967).

The Select Committee noted that it had given Powell notice of the matters it would inquire into, that Powell had the right to attend all hearings (which would be public) with his counsel, and that the Committee would call witnesses upon Powell's written request and supply a transcript of the hearings. *Id.*, at 59.

[2] The complaint also attacked the House Resolution as a bill of attainder, and *ex post facto* law and as cruel and unusual punishment. Further, petitioners charged that the hearing procedures adopted by the Select Committee violated the Due Process Clause of the Fifth Amendment.

[3] The District Court refused to convene a three-judge court and the Court of Appeals affirmed. Petitioners did not press this issue in their petition for writ of certiorari, apparently recognizing the Validity of the Court of Appeals' ruling. See *Stamler* v. *Willis*, 393 U.S. 217 (1969).

[4] Petitioners also requested that a writ of mandamus issue ordering that the named officials perform the same acts.

[5] The District Court entered its order April 7, 1967, and a notice of appeal was filed the same day. On April 11, 1967, Powell was reelected to the House of Representatives in a special election called to fill his seat. The formal certification of election was received by the House on May 1, 1967, but Powell did not again present himself to the House or ask to be given the oath of office.

[6] Respondents' authority for this assertion is a footnote contained in *Gojack* v. *United States*, 384 U.S. 702, 707, n. 4. (1966): "Neither the House of Representatives nor its committees are continuing bodies."

[7] The rule that this Court lacks jurisdiction to consider the merits of a moot case is a branch of the constitutional command that the judicial power extends only to cases or controversies. See *Sibron* v. *New York*, 392 U.S. 40, 57 (1968); R. Robertson & F. Kirkham, Jurisdiction of the Supreme Court of the United States §§ 270–271 (R. Wolfson & P. Kurland ed., 1951); S. Diamond, Federal Jurisdiction To Decide Moot Cases, 94 U. Pa. L. Rev. 125 (1946); Note, Cases Moot on Appeal: A Limit on the Judicial Power, 103 U. Pa. L. Rev. 772 (1955).

[8] Petitioners do not press their claim that respondent McCormack should be required to administer the oath to Powell, apparently conceding that the seating of Powell has rendered this specific claim moot. Where several forms of relief are requested and one of these requests subsequently becomes moot, the Court has still considered the remaining requests. See *Standard Fashion Co.* v. *Magrane-Houston Co.*, 258 U.S. 346, 353 (1922). Respondents also argue that the seating of Petitioner Powell has mooted the claims of Powell's constituents. Since this case will be remanded, that issue as well as petitioners' other claims can be disposed of by the court below.

[9] Alejandrino's brief did not consider either the possibility that his request for injunctive relief had become moot or whether his salary claim required that the Court treat the propriety of his suspension. No brief was filed on behalf of respondents.

[10] After discussing the insufficiency of Alejandrino's averments as to the officer responsible for his salary, the Court stated: "Were that set out, the remedy of the Senator would seem to be by mandamus to compel such official in the discharge of his ministerial duty to pay him the salary due. . . ." 271 U.S., at 534. That the insufficiency of Alejandrino's averments was the reason for dismissal is further substantiated by a later passage: "As we are not able to derive from the petition sufficient information upon which properly to afford such a remedy [mandamus], we must treat the whole case as moot and act accordingly." *Id.*, at 535.

[11] Paragraph 18b of petitioners' complaint avers that "Leake W. Johnson, as Sergeant-at-Arms of the House" is responsible for and refuses to pay Powell's salary and prays for an injunction restraining the Sergeant-at-Arms from implementing the House resolution depriving Powell of his salary as well as mandamus to order that the salary be paid.

[12] Federal courts were first empowered to grant declaratory judgments in 1934, see 48 Stat. 955, 10 years after Alejandrino filed his complaint.

[13] It was expressly stated in *Alejandrino* that a properly pleaded mandamus action could be brought, 271 U.S., at 535, impliedly holding that Alejandrino's salary claim had not been mooted by the expiration of his suspension.

[14] Respondents do not supply any substantiation for their assertion that the term of the Georgia Legislature did not expire until December 31. Presumably, they base their statements upon Ga. Code Ann. §§ 2–1601, 2–1603 (Supp. 1968).

[15] Respondents also suggest that *Bond* is not applicable because the parties in *Bond* had stipulated that Bond would be entitled to back salary if his constitutional challenges were accepted, while there is no stipulation in this case. However, if the claim in *Bond* was moot, a stipulation by the parties could not confer jurisdiction. See, *e.g.*, *California* v. *San Pablo and Tulare Railroad Co.*, 149 U.S. 308, 314 (1893).

[16] Since the court below disposed of this case on grounds of justiciability, it did not pass upon whether Powell had brought an appropriate action to recover his salary. Where a court of appeals has misconceived the applicable law and therefore failed to pass upon a question, our general practice has been to remand the case to that court for consideration of the remaining issues. See, *e.g.*, *Utah Pie Co.* v. *Continental Baking Co.*, 386 U.S. 685, 704 (1967); *Bank of America National Trust & Savings Assn.* v. *Parnell*, 352 U.S. 29, 34 (1956). We believe that such action is appropriate for resolution of whether Powell in this litigation is entitled to mandamus against the Sergeant-at-Arms for salary withheld pursuant to the House resolution.

[17] Article I, § 6, provides: "for any Speech or Debate in either House, they [Senators and Representatives] shall not be questioned in any other place."

[18] Petitioners ask the Court to draw a distinction between declaratory relief sought against members of Congress and either an action for damages or a criminal prosecution, emphasizing that our four previous cases concerned "criminal or civil sanctions of a deterrent nature." Brief for Petitioners, at 171.

[19] See 5 Debates on the Federal Constitution 406 (J. Elliot ed. 1876); 2 Records of the Federal Convention 246 (Farrand rev. ed. 1966) (hereinafter cited as Farrand).

[20] The English Bill of Rights contained a provision substantially identical to Art. I, § 6: "That the Freedom of Speech, and Debates or Proceedings in Parliament, ought not to be impeached or questioned in any Court or Place out of Parliament." 1 W. & M., Sess. 2, c. 2. The English and American colonial history is traced in some detail in A. Cella, The Doctrine of Legislative Privilege of Freedom of Speech and Debate: Its Past, Present and Future as a Bar to Criminal Prosecutions in the Courts, 2 Suffolk U. L. Rev. 1, 3–16 (1968), and L. Yankwich, The Immunity of Congressional Speech—Its Origin, Meaning and Scope, 99 U. Pa. L. Rev. 960, 961–966 (1951).

[21] *United States* v. *Johnson*, 383 U.S. 169, 182–183 (1966).

[22] 1 The Works of James Wilson 421 (McCloskey ed. 1967).

[23] In *Dombrowski* $500,000 in damages was sought against a Senator and the chief counsel of a Senate Subcommittee chaired by that Senator. Record, pp. 10–11. We affirmed the grant of summary judgment as to the Senator but reversed as to subcommittee counsel.

[24] The Court in *Kilbourn* quoted extensively from *Stockdale* v. *Hansard*, 9 AD. & E. 1, 114, 112, Eng. Rep. 1112, 1156 (Q.B. 1839), to refute the assertion that House agents were immune because they were executing orders of the House: "[I]f the Speaker, by authority of the House, order an illegal Act, though that authority shall exempt him from question, his order shall no more justify the person who executed it than King Charles's warrant for levying ship-money could justify his revenue officer." Kilbourn eventually recovered $20,000 against Thompson. See *Kilbourn* v. *Thompson*, 11 D.C. (MacArth. & M.) 401, 432 (Sup. Ct. 1883).

[25] A Congressman is not by virtue of the Speech or Debate Clause absolved of the responsibility of filing a motion to dismiss and the trial court must still determine the applicability of the clause to plaintiff's ac-

tion. See *Tenney* v. *Brandhove*, 341 U.S. 367, 377 (1951).

[26] Given our disposition of this issue, we need not decide whether under the Speech or Debate Clause petitioners would be entitled to maintain this action solely against members of Congress where no agents participated in the challenged action and no other remedy was available. Cf. *Kilbourn* v. *Thompson*, 103 U.S. 168, 204–205 (1880).

[27] Powell was "excluded" from the 90th Congress, *i.e.*, he was not administered the oath of office and was prevented from taking his seat. If he had been allowed to take the oath and subsequently had been required to surrender his seat, the House's action would have constituted an "expulsion." Since we conclude that Powell was excluded from the 90th Congress, we express no view on what limitations may exist on Congress' power to expel or otherwise punish a member once he has been seated.

[28] House Resolution 278, as amended and adopted, provided "That said Adam Clayton Powell . . . be and the same hereby is *excluded* from membership in the 90th Congress . . . ." 113 Cong. Rec. 1942 (daily ed. March 1, 1967) (Emphasis added)

[29] Other Congresses have expressed an identical view. The Report of the Judiciary Committee concerning the proposed expulsion of William S. King and John G. Shumaker informed the House:

"Your committee are of the opinion that the House of Representatives has no authority to take jurisdiction of violations of law or offenses committed against a previous Congress. This is a purely legislative body, and entirely unsuited for the trial of crimes. The fifth section of the first article of the Constitution authorizes 'each house to determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.' This power is evidently given to enable each house to exercise its constitutional function of legislation unobstructed. It cannot vest in Congress jurisdiction to try a member for an offense committed before his election; for such offense a member, like any other citizen, is amenable to the courts alone." H.R. Rep. No. 815, 44th Cong., 1st Sess., 2 (1976).

See also 15 Cong. Rec. 4434 (1884) (ruling of the Speaker); H.R. Rep. No. 81, 42d Cong., 3d Sess., 8 (1873) (expulsion of James Brooks and Oakes Ames); H.R. Rep. No. 179, 35th Cong., 1st Sess., 4–5 (1858) (expulsion of Orsamus B. Matteson).

[30] We express no view as to whether such a ruling would have been proper. A further distinction between expulsion and exclusion inheres in the fact that a member whose expulsion is contemplated may as a matter of right address the House and participate fully in debate while a member-elect apparently does not have a similar right. In prior cases the member whose expulsion was under debate has been allowed to make a long and often impassioned defense. See Cong. Globe, 42d Cong., 3d Sess., 1723 (1873) (expulsion of Oakes Ames); Cong. Globe, 41st Cong., 2d Sess., 1524–1525, 1544 (1870) (expulsion of B. F. Whittemore); Cong. Globe, 34th Cong., 3d Sess., 925–926 (1857) (expulsion of William A. Gilbert); Cong. Globe, 34th Cong., 3d Sess., 947–951 (1857) (expulsion of William W. Welch); 9 Annals of Cong. 2966 (1799) (expulsion of Matthew Lyon). On at least one occasion the member has been allowed to cross-examine other members during the expulsion debate. 2 A. Hinds, Precedents of the House of Representatives § 1643 (1907).

[31] A motion for the previous question is a debate-limiting device which, when carried, has the effect of terminating debate and of forcing a vote on the subject at hand. See Rules of the House of Representatives, H.R. Doc. No. 529, 89th Cong., 2d Sess., §§ 804–809 (1967); Cannon's Procedure in the House of Representatives, H. R. Doc. No. 610, 87th Cong., 2d Sess., 277–281 (1963).

[32] R. Eckhardt, The Adam Clayton Powell Case, 45 Tex. L. Rev. 1205, 1209 (1967). The views of Congressman Eckhardt were echoed during the exclusion proceedings. Congressman Cleveland stated that, although he voted in favor of and supported the Select Committee's recommendation, if the exclusion amendment received a favorable vote on the motion for the previous question, then he would support the amendment "on final passage." CONGRESSIONAL RECORD, vol. 113, pt. 4, p. 5031. Congressman Gubser was even more explicit:

"I shall vote against the previous question on the Curtis amendment simply because I believe future and perfecting amendments should be allowed. But if the previous question is ordered, then I will be placed on the horns of an impossible dilemma.

"Mr. Speaker, I want to expel Adam Clayton Powell, by seating him first, but that will not be my choice when the Curtis amendment is before us. I will be forced to vote for exclusion, about which I have great constitutional doubts, or to vote for no punishment at all. Given this raw and isolated issue, the only alternative I can follow is to vote for the Curtis amendment. I shall do so, Mr. Speaker, with great reservation." *Id.*, at 5031.

[33] Although each judge wrote a separate opinion, all were clear in stating that the District Court possessed subject matter jurisdiction. *Powell* v. *McCormack*, 129 U.S. App. D.C. 354, 368, 384, 385; 395 F. 2d 577, 591, 607, 608 (C. A. D. C. Cir 1968).

[34] We have determined that the case is not moot. See Part II, *supra*.

[35] Indeed, the thrust of respondents' argument on this jurisdictional issue is similar to their contentions that this case presents a nonjusticiable "political question." They urge that it would have been "unthinkable" to the Framers of the Constitution for courts to review the decision of a legislature to exclude a member. However, we have previously determined that a claim alleging that a legislature has abridged an individual's constitutional rights by refusing to seat an elected representative constitutes a "case or controversy" over which federal courts have jurisdiction. See *Bond* v. *Floyd*, 385 U.S. 116, 131 (1966). To the extent the expectations of the Framers are discernible and relevant to this case, they must therefore relate to the special problem of review by *federal* courts of actions of the *federal* legislature. This is of course a problem of separation of powers and is to be considered in determining justiciability. See *Baker* v. *Carr*, 369 U.S. 186, 210 (1962).

[36] Brief for Respondents, at 39.

[37] Petitioners' complaint is predicated, *inter alia*, on several sections of Article I, Article III, and several amendments to the Constitution. Respondents do not challenge the substantiality of these claims.

[38] Act of May 31, 1870, c. 114, 16 Stat. 146. The statute is now 28 U.S.C. § 1344 (1964 ed.).

[39] See Cong. Globe, 41st Cong., 2d Sess., 3872 (1870).

[40] Respondents rely on *Barry* v. *United States ex rel. Cunningham*, 279 U.S. 597 (1929). *Barry* involved the power of the Senate to issue an arrest warrant to summon a witness to give testimony concerning a senatorial election. The Court ruled that issuance of the warrant was constitutional, relying on the power of the Senate under Art. I, § 5, to be the judge of the elections of its members. Respondents particularly rely on language the Court used in discussing the power conferred by Art. I, § 5. The Court noted that under § 5 the Senate could "render a judgment which is beyond the authority of any other tribunal to review." *Id.*, at 613.

Barry provides no support for respondents' argument that this case is not justiciable, however. First, in *Barry* the Court reached the merits of the controversy, thus indicating that actions allegedly taken pursuant to Art. I, § 5, are not automatically immune from judicial review. Second, the quoted statement is dictum; and, later in the same opinion, the Court noted that the Senate may exercise its power subject "to the restraints imposed by or found in the implications of the Constitution." *Id.*, at 614. Third, of course, the statement in *Barry* leaves open the particular question that must first be resolved in this case: the existence and scope of the textual commitment to the House to judge the qualifications of members.

[41] In addition to the three qualifications set forth in Art. I, § 2, Art. I, § 3, cl. 7, authorizes the disqualification of any person convicted in an impeachment proceeding from "any Office of honor, Trust or Profit under the United States"; Art. I, § 6, cl. 2, provides that "no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office"; and § 3 of the 14th Amendment disqualifies any person "who, having previously taken an oath . . . to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof." It has been argued that each of these provisions, as well as the Guaranty Clause of Article IV and the oath requirement of Art. VI, cl. 3, is no less a "qualification" within the meaning of Art. I, § 5, than those set forth in Art. I, § 2. A Dionisopoulos, A Commentary on the Constitutional Issues in the Powell and Related Cases, 17 J. Pub. L. 103, 111–115 (1968). We need not reach this question, however, since both sides agree that Powell was not ineligible under any of these provisions.

[42] Consistent with this interpretation, federal courts might still be barred by the political question doctrine from reviewing the House's factual determination that a member did not meet one of the standing qualifications. This is an issue not presented in this case and we express no view as to its resolution.

[43] Indeed, the force of respondents' other arguments that this case presents a political question depends in great measure on the resolution of the textual commitment question. See Part VI, Section B(2), *infra*.

[44] Since Art. I, § 5, cl. 1, applies to both Houses of Congress, the scope of the Senate's power to judge the qualifications of its members necessarily is identical to the scope of the House's power, with the exception, of course, that Art. I, § 3, cl. 3, establishes different age and citizenship requirements for membership in the Senate.

[45] Since the reign of Henry IV (1399–1413), no clergyman had sat in the House of Commons. 1 E. Porritt, The Unreformed House of Commons 125 (1903).

[46] Because the British do not have a written constitution, standing incapacities or disqualifications for membership in Parliament are derived from "the custom and law of parliament." 1 Blackstone's Commentaries *162; see *id.*, at *175. The groups thus disqualified as of 1770 included aliens; minors; judges who sat in the House of Lords; clergy who were represented in their own convocation; persons "attainted of treason or felony"; sheriffs, mayors, and bailiffs as representatives for their own jurisdictions; and certain taxing officials and officers of the Crown. *Id.*, at *175–176. Not until the exclusion of John Wilkes, discussed *infra*, did Blackstone subscribe to the theory that, in addition, the Commons could declare ineligible an individual "in particular [unspecified] circumstances . . . for that parliament" if it deemed him unfit to serve on grounds not encompassed by the recognized standing incapacities. As we explain, *infra*, this position was subsequently repudiated by the House in 1782. A Clerk of the House of Commons later referred to cases in which this theory was relied upon "as examples of an excess of . . . jurisdiction by the Commons; for one house of Parliament cannot create a disability unknown to the law." May's Parliamentary Practice 67 (13th ed. T. Webster 1924).

[47] In 1619, the Virginia House of Burgesses challenged the eligibility of certain delegates on the ground that they did not hold their plantations under proper patents from the Virginia Company in England. See generally, 7 The Federal and State Constitutions, Colonial Charters, and Other Organic Laws 3783–3810 (F. Thorpe ed. 1909) (hereinafter cited as Thorpe). One of them, a Captain Warde, was admitted on condition that he obtain the necessary patent. The others, representatives from Martin's Brandon plantation, were excluded on the ground that the owner of the plantation had claimed that his patent exempted him from the colony's laws. See Journals of the House of Burgesses of Virginia: 1619–1658/59, at 4–5 (1915); M. Clarke, Parliamentary Privilege in the American Colonies 133–134 (1943). The questions presented by these two cases, therefore, seem to be jurisdictional in nature; that is, an attempt was made to gain representation for plantations over which the assembly may have had no power to act. Thus viewed these cases are analogous to the exclusions for failure to comply with standing qualifications. They certainly are not precedents which support the view that a legislative body could exclude members for mere character defects or prior misconduct disapproved by the assembly. See generally, M. Clarke, *supra*, at 132–204; J. Greene, The Quest for Power: The Lower Houses of Assembly in the Southern Royal Colonies: 1689–1776, at 171–204 (1963).

[48] For example, in 1585 the Commons expelled a Doctor Parry for unspecified misbehavior. A Compleat Journal of the Votes, Speeches and Debates of the House of Lords and House of Commons Throughout the Whole Reign of Queen Elizabeth, of Glorious Memory 352 (D'Ewes ed. 1708); and in 1628 Sir Edmund Sawyer was expelled because he had sought to induce a witness to suppress evidence against Sir Edmund in testimony before the House 1. H. C. Jour. 917.

[49] In expelling Sir Edmund Sawyer in 1628, the Commons declared "him to be unworthy ever to serve as a Member of this House." *Ibid.* Almost identical language was used in the expulsion of H. Benson in 1641. 2 *id.*, at 301. But by 1642, the formula had been changed to "disabled to sit any longer *in this Parliament* as *a Member of this House* . . . ." *Id.*, at 703. (Emphasis added.) By the 18th century it was apparently well established that an expulsion by the House of Commons could last no longer than the duration of the Parliament from which the member was expelled. See I Backstone's Commentaries *176.

[50] For example, in 1652, the Virginia House of Burgesses expelled two members for prior conduct disapproved by the assembly, Journals of the House of Burgesses, *supra*, at 85; and in 1683, Rhode Island expelled a member "from acting in this present Assembly" for refusing to answer a court summons. 1 S. Arnold, History of the State of Rhode Island and Providence Plantations 289 (1859). See generally, M. Clarke, *supra*, at 173–204.

[51] In 1726, the Massachusetts House of Representatives excluded Gershom Woodle, who had been expelled on three previous occasions as "unworthy to be a Member." 7 Journals of the House of Representatives of Massachusetts 1726–1727, at 4–5, 15, 68–69 (1926). In 1758, North Carolina expelled Francis Brown for perjury. He was reelected twice in 1760 and excluded on both occasions; however, when he was elected at the 1761 general election, he was allowed to take his seat. 5 Colonial Records of North Carolina 1057–1058 (1887); 6 *id.*, at 375, 474, 662–663, 672–673 (1888). There may have been similar exclusions of two men elected in 1710 to the New Jersey Assembly. See M. Clarke, *supra*, at 197–198.

[52] Significantly, the occasional assumption of this broader expulsion power did not go unchallenged, M. Clarke, *supra*, at 196–202; and it was not supported by the only parliamentary precedent, the Walpole case.

[53] Pursuant to a general warrant, Wilkes was arrested, his home ransacked, and his private papers seized. In his later election campaigns, Wilkes denounced the use of general warrants, asserting that he was fighting for liberty itself. See 11 L. Gipson, The British Empire Before the American Revolution 213–214 (1965).

[54] The issue before the Commons was clear: could the Commons "put in any disqualification, that is not put in by the law of the land." 1 Cavendish's Debates 384 (ed. J. Wright 1841). The affirmative answer was somewhat less than resounding. After Wilkes' third reelection, the motion to seat his opponent carried 197 to 143.

[55] The validity of the House's action against Wilkes rested to a large extent on the validity of the Walpole precedent. Taswell-Langmead's, *supra*, at 585. Thus, the House of Commons resolution expunging, as subversive to the rights of the whole electorate, the action taken against Wilkes was also a tacit repudiation of the similar action taken against Walpole in 1712.

[56] English law is apparently the same today. See May's Parliamentary Practice 105–108 (17th ed. B. Cocks 1964).

[57] The Council of Censors was established by the 1776 Pennsylvania Constitution. It was an elected body that was specifically charged with the duty "to enquire whether the constitution has been preserved inviolate in every part; and whether the legislative and executive branches of government have performed their duty as guardians of the people, or assumed to themselves, or exercised other or greater powers than they are entitled to by the constitution." Pa. Const. of 1776, §47, 5 Thorpe 3091. See Introduction to Pennsylvania Convention Proceedings: 1776–1790, at IV (1825).

[58] In discussing the case, respondents characterize the earlier action as an *exclusion*. The Council of Censors, however, stated that the general assembly had resolved that the member "is expelled from his seat." Pennsylvania Convention Proceedings, *supra*, at 89. The account of the dissenting committee members suggests that the term expulsion was properly used. They note that in February 1783 the assembly received a letter from the Comptroller General charging the assemblyman with fraud. Not until September 9, 1783, did the assembly vote to expel him. Presumably, he held his seat until that time. But, even if he had been excluded, arguably he was excluded for not meeting a standing incapacity, since the Pennsylvania Constitution of 1776 required assemblymen to be "most noted for wisdom and *virtue*." Pa. Const. of 1776, § 7, 5 Thorpe 3084. (Emphasis added.) In fact, the dissenting members of the Committee argued that the expelled member was ineligible under this very provision. Pennsylvania Convention Proceedings, *supra*, at 89.

Respondents cite one other exclusion during the period between the Declaration of Independence and the Constitutional Convention 11 years later. In 1780 the Virginia Assembly excluded John Breckinridge because he was a minor. Minority, of course, was a traditional standing incapacity, and Professor Warren therefore appears to have been correct in concluding that this exclusion was probably based upon an interpretation of the state constitutional requirement that members must be duly qualified according to law. Va. Const., 7 Thorpe 3816. See C. Warren, The Making of the Constitution 423, n. 1 (1928). Respondents, based upon their misinterpretation of the Pennsylvania case just discussed, criticize Professor Warren for concluding that there had been only one exclusion during this period. Our research, however, has disclosed no other cases.

[59] Wilkes had established a reputation both in England and the Colonies as a champion of free elections, freedom from arbitrary arrest and seizure, and freedom of the press. See 11 L. Gipson, *supra*, at 191–222.

[60] See R. Postgage, That Devil Wilkes 171–172, 173–174 (1929). During the House of Commons debates in 1781, a member remarked that expelling Wilkes had been "one of the great causes which had separated . . . [England] from America." 22 Parl. Hist. Eng. 100–101 (1781).

The writings of the pamphleteer "Junius" were widely reprinted in colonial newspapers and lent considerable support to the revolutionary cause. See 3 Dictionary of American History 190 (1940). Letter XVIII of the "Letters of Junius" bitterly attacked the exclusion of Wilkes. This letter, addressed to Blackstone, asserted:

"You cannot but know, sir, that what was Mr. Wilkes's case yesterday may be yours or mine to-morrow, and that, consequently the common right of every subject of the realm is invaded by it . . . . If the expulsion of a member, not under any legal disability, of itself creates in him an incapacity to be elected, I see a ready way marked out, by which the majority may, at any time, remove the honestest and ablest men who happen to be in opposition to them. To say that they will not make extravagant use of their power would be language unfit for a man so learned in the laws as you are. By your doctrine, sir, they have the power: and laws, you know, are intended to guard against what men may do, not to trust what they will do." 2 Letters of Junius, Letter XVIII, at 118 (1821).

[61] See C. Warren, *supra*, at 399–426.

[62] Dickinson also said that a built-in veneration for wealth would be inconsistent with the republican ideal that merit alone should determine who holds the public trust. 2 The Records of the Federal Constitution of 1787, at 123 (M. Farrand rev. ed. 1966) (hereinafter cited as Farrand).

[63] On August 10, a delegate moved to reconsider the citizenship qualification. The delegate proposed to substitute a three-year requirement for the seven-year requirement already agreed upon. The motion passed. *Id.*, at 251. However, when this proposal was considered on August 13, it was rejected. *Id.*, at 265–266.

[64] Charles Pinckney proposed that the President, judges, and legislators of the United States be required to swear that they possessed a specified amount of unincumbered property. Benjamin Franklin expressed his strong opposition, observing that "[s]ome of the greatest rogues he was ever acquainted with, were the richest rogues." *Id.*, at 249. He voiced the fear that a property requirement would "discourage the common people from removing to this Country." *Ibid.* Thereafter, "the Motion of Mr. Pinkney [*sic*] was rejected by so general a *no*, that the States were not called." *Ibid.* (Emphasis in original.)

[65] "That the right of electors to be represented by men of their own choice, was so essential for the preservation of all of their other rights, that it ought to be considered as one of the most sacred parts of our constitution. . . . That the law of the land had regulated the qualification of members to serve in parliament and that the free holders . . . had an indisputable right to return whom they thought proper, provided he was not disqualified by any of those known laws . . . . They are not occasional but fixed: to rule and govern the question as it shall arise; not to start up on a sudden, and shift from side to side, as the caprice of the day or the fluctuation of party shall direct." 16 Parl. Hist. Eng. 589–590 (1769).

[66] *Id.*, at 589.

[67] Wilkes had made essentially the same argument in one of his early attempts to have the resolutions denying him a seat expunged: "This usurpation, if acquiesced under, would be attended with the most alarming consequences. If you can reject those disagreeable to a majority, and expel whom you please, the House of Commons will be self-created and self-existing. You may expel till you approve, and thus in effect you nominate. The original idea of this House being the representative of the Commons of the realm will be lost." 18 Parl. Hist. Eng. 367 (1775).

[68] Professor Warren concluded that "Madi-

son's reference was undoubtedly to the famous election case of John Wilkes . . . ." C. Warren, *supra*, at 420, n. 1. It is also possible, however, that he was referring to the Parliamentary Test Act, 30 Car. II st. 2, c. 1 (1678), which had excluded Catholics as a group from serving in Parliament.

[69] Professor Charles Warren, upon whose interpretation of these events petitioners rely, concluded that the Convention's decision to reject Gouverneur Morris' proposal and the more limited proposal of the Committee of Detail was an implicit adoption of Madison's position that the qualifications of the elected "were fundamental articles in a Republican Govt. and ought to be fixed by the Constitution." 2 Farrand 249–150. See C. Warren, *supra*, at 420–421. Certainly, Warren argued, "[s]uch action would seem to make it clear that the Convention did not intend to grant to a single branch of Congress . . . the right to establish any qualifications for its members other than those qualifications established by the Constitution itself . . . . For certainly it did not intend that a single branch of Congress should possess a power which the Convention had expressly refused to vest in the whole Congress." *Id.*, at 421. See 1 J. Story, Commentaries on the Constitution of the United States § 625, at 445 (1873). Although Professor Chafee argued that congressional precedents do not support this construction, he nevertheless stated that forbidding any additions to the qualifications expressed in the Constitution was "the soundest policy." Z. Chafee, Free Speech in the United States 256 (1941).

[70] See 10 W. Holdsworth, A History of English Law 540–542 (1938).

[71] Holdsworth notes that in the first edition of Blackstone's Commentaries Blackstone enumerated various incapacities and then concluded that "subject to these standing restrictions and disqualifications, every subject of the realm is eligible [for membership in the House of Commons] of common right." 1 Blackstone's Commentaries *170. Blackstone was called upon in Commons to defend Wilkes' exclusion and the passage was quoted against him. Blackstone retaliated by writing a pamphlet and making two additions to later editions of his *Commentaries* in an effort to justify the decision of Parliament. W. Holdsworth, *supra*, at 540–541.

[72] Appendix D to Brief for Respondents, at 52.

[73] C. Warren, *supra*, at 422, n. 1. Professor Warren buttressed his conclusion by noting that the Massachusetts Constitution of 1780 "contained affirmative qualifications for Representatives and exactly similar negative qualifications for Senators." *Ibid.* Apparently, these provisions were not considered substantively different, for each house was empowered in identical language to "judge of the elections, returns, and qualifications of their own members, *as pointed out in the consultation.*" Mass. Const., Pt. 2, c. I. § 2, Art. IV, 3 Thorpe 1897, and § 3, Art. X, 3 Thorpe 1899. (Emphasis added.) See C. Warren, *supra*, at 422–423, n. 1.

[74] In No. 52 of The Federalist, Madison stated:

"The qualifications of the elected, being less carefully and properly defined by the State constitutions, and being at the same time more susceptible of uniformity, have been very properly considered and regulated by the Convention. [He then enumerated the qualifications for both representatives and Senators.] . . . Under these reasonable limitations, the door of this part of the federal government is open to merit of every description, whether native or adoptive, whether young or old, and without regard to poverty or wealth, or to any particular profession or religious faith." The Federalist 326 (Mentor ed. 1961).

[75] Respondents dismiss Madison's assertion that the "qualifications of the elected, . . . being at the same time more susceptible of uniformity, have been very properly considered and regulated by the convention," as nothing more than a refutation of the charge that the new national legislature would be free to establish additional "standing incapacities." However, this conclusion cannot be reconciled with the pre-Convention history on this question, the Convention debates themselves, and, in particular, the delegates' decision to require a two-thirds vote for expulsion.

[76] At the same convention, Robert Livingston, one of the new Constitution's most ardent supporters and one of the State's most substantial landowners, endorsed this same fundamental principle: "The people are the best judges who ought to represent them. To dictate and control them, to tell them whom they shall not elect, is to abridge their natural rights." 2 Elliot's Debates 292–293.

[77] Appendix D to Brief for Respondents, at 62.

[78] In 1799, during the 5th Congress, 1st Session, the House considered expelling Matthew Lyon, a Republican, for sedition. The vote to expel, however, was 49 to 45, and broke down largely along partisan lines. Although Lyon's opponents, the Federalists, retained a majority in the 6th Congress, to which Lyon was reelected, and although there were political advantages to be gained from again trying to prevent him from taking his seat, there was no effort made to exclude him. See P. Dionisopoulos, A Commentary on the Constitutional Issue in the Powell and Related Cases, 17 J. Pub. L. 107, 123–127 (1968).

[79] Another Maryland representative was unsuccessfully challenged in 1808 on grounds almost identical to those asserted in the challenge of McCreery. See 18 Annals of Cong. 1848–1849 (1808). In 1844, the Senate declined to exclude John M. Niles, who was accused of being mentally incompetent, after a special committee reported him competent. Cong. Globe, 28th Cong., 1st Sess., 564–565, 602 (1844). In 1856, the House rejected an attempt to exclude Samuel Marshall for violating an Illinois law prohibiting state judges from running for other offices. 1 A. Hinds, Precedents of the House of Representatives § 415 (1907) (hereinafter cited as Hinds). That same year, the Senate refused to exclude Lyman Trumbull for violating the same Illinois law. *Ibid.*

[80] Between 1862 and 1867, both the House and Senate resisted several attempts to exclude members-elect who were accused of being disloyal to the Union during the Civil War. See, *id.*, §§ 448, 455, 458; Senate Subcommittee on Privileges and Elections, Senate Committee on Rules and Administration, Senate Election, Expulsion and Censure Cases, S. Doc. No. 71, 87th Cong., 2d Sess., 21 (1962) (hereinafter cited as Senate Cases).

[81] That same year the Senate also excluded a supporter of the Confederacy. Senate Cases 40. The House excluded two others shortly thereafter, one for the same offense, and another for selling appointments to the Military and Naval Academies. See 1 Hinds §§ 459, 464; 2 Hinds § 1273.

[82] This departure from previous House construction of its power to exclude was emphasized by Congressman William P. Fessenden. "[T]he power which we have under the Constitution to judge the qualifications of members of the body is not a mere arbitrary power, to be exerted according to the will of the individuals who may vote upon the subject. It ought to be a power subject to certain rules and founded upon certain principles. So it was up to a very later period, until the rebellion. The rule simply was, if a man came here and presented proper credentials from his State, to allow him to take the ordinary oath, which we all took, to support the Constitution, and be admitted, and if there was any objection to him to try that question afterward." Cong. Globe, 40th Cong., 2d Sess., 685 (1868).

[83] For example, in 1870, the House refused to exclude a Texas Congressman accused of a variety of criminal acts, 1 Hinds § 465; but in 1882 and again in 1900 the House excluded a member-elect for practicing polygamy. 1 Hinds §§ 473, 477–480. Thereafter, it apparently did not consider excluding anyone until shortly after World War I, when it twice excluded Victor L. Berger, an avowed Socialist, for giving aid and comfort to the enemy. Significantly, the House committee investigating Berger concluded that he was ineligible under the express provision of § 3 of the Fourteenth Amendment. 6 C. Cannon, Precedents of the House of Representatives §§ 56–59 (1935) (hereinafter cited as Cannon). Berger, the last person to be excluded from the House prior to Powell, was later reelected and finally admitted after his criminal conviction was reversed. 65 Cong. Rec. 7 (1923).

The House next considered the problem in 1925 when it contemplated excluding John W. Langley for his alleged misconduct. Langley resigned after losing a criminal appeal, and the House therefore never voted upon the question. 6 Cannon § 238. The most recent exclusion attempt prior to Powell's occurred in 1933, when the House refused to exclude a Representative from Minnesota who had been convicted of sending defamatory matter through the mail. See 77 Cong. Rec. 73–74, 131–139 (1933).

The Senate has not excluded anyone since 1929; in that year it refused to seat a member-elect because of improper campaign expenditures. 6 Cannon § 180. In 1947, a concerted effort was made to exclude Senator Theodore C. Bilbo of Mississippi for allegedly accepting gifts from war contractors and illegally intimidating Negroes in Democratic primaries. See 93 Cong. Rec. 3–28 (1947). He died, however, before a decision was reached.

[84] During the debates over H.R. Res. No. 278, Congressman Celler, chairman of both the Select Committee and the Judiciary Committee, forcefully insisted that the Constitution "unalterably fixed and defined" the qualifications for membership in the House and that any other construction of Art. I, § 5, would be "improper and dangerous." CONGRESSIONAL RECORD, vol. 113, pt. 4, p. 4998. See H.R. Rep. No. 484, 43d Cong., 1st Sess., 11–15 (1874) (views of minority); H.R. Rep. No. 85, 56th Cong., 1st Sess., 53–77 (1900) (views of minority). In the latter report, the dissenters argued: "A small partisan majority might render the desire to arbitrarily exclude, by a majority vote, in order to more securely intrench itself in power, irresistible. Hence its exercise is controlled by legal rules. In case of expulsion, when the requisite two-thirds can be had, the motive for the exercise of arbitrary power no longer exists, as a two-thirds partisan majority is sufficient for every purpose. . . . The power of exclusion in a matter of law, to be exercised by a majority vote, in accordance with legal principles, and exists only where a member-elect lacks some of the qualifications required by the Constitution." *Id.*, at 76–77.

[85] "Determining the basis for congressional action is itself difficult since a congressional action, unlike a reported judicial decision, contains no statement of the reasons for the disposition, one must fall back on the debates and the committee reports. If more than one issue is raised in the debates, one can never be sure on what basis the action was predicated. Unlike a court, which is presumed to be disinterested, in an exclusion case the concerned house is in effect a party to the controversy that it must adjudicate. Consequently, some members may be inclined to vote for exclusion though they strongly doubt its constitutionality." 81 Harv. L. Rev., at 679.

[86] In fact, the Court has noted that it is an "inadmissible suggestion" that action might be taken in disregard of a judicial determination. *McPherson* v. *Blacker*, 146 U.S. 1, 24 (1892).

OPINION OF MR. JUSTICE DOUGLAS

While I join the opinion of the Court, I add a few words. As the Court says, the important constitutional question is whether the Congress has the power to deviate from or alter the qualifications for membership as a Representative contained in Art. I, § 2, cl. 2, of the Constitution.[1] Up to now the understanding has been quite clear to the effect that such authority does not exist.[2] To be sure, Art. I, § 5, provides that "Each House shall be the judge of the Elections, Returns and Qualifications of its own Members. . . ." Contests may arise over whether an elected official meets the "qualifications" of the Constitution, in which event the House is the sole judge.[3] But the House is not the sole judge when "qualifications" are added which are not specified in the Constitution.[4]

A man is not seated because he is a Socialist or a Communist.[5]

Another is not seated because in his district members of a minority are systematically excluded from voting.[6]

Another is not seated because he has spoken out in opposition to the war in Vietnam.[7]

The possible list is long. Some cases will have the racist overtones of the present one.

Others may reflect religious or ideological clashes.[8]

At root, however, is the basic integrity of the electoral process. Today we proclaim the constitutional principle of "one man one vote." When that principle is followed and the electors chose a person who is repulsive to the Establishment in Congress, by what constitutional authority can that group of electors be disenfranchised?

By Art. I, § 5, the House may "expel a member" on a vote of two-thirds. And if this were an expulsion case I would think that no justiciable controversy were presented, the vote of the House being two-thirds or more. But it is not an expulsion case. Whether it could have been won as an expulsion case, no one knows. Expulsion for "misconduct" may well raise different questions, different considerations. Policing the conduct of members, a recurring problem in the Senate and House as well, is quite different from the initial decision whether an elected official should be seated. It well might be easier to bar admission than to expel one already seated.

The House excluded Representative-elect Powell from the Ninetieth Congress allegedly for misappropriating public funds and for incurring the contempt of New York courts.[9] Twenty-six years earlier, members of the upper chamber attempted to exclude Senator-elect William Langer of North Dakota for like reasons.[10] Langer first became State's Attorney for Morton County, North Dakota, from 1914 to 1916, and then served as State Attorney General from 1916 to 1920. He became Governor of the State in 1932 and took office in January 1933. In 1934 he was indicated for conspiring to interfere with the enforcement of federal law by illegally soliciting political contributions from federal employees and suit was filed in the State Supreme Court to remove him from office[11] While that suit was pending he called the State Legislature into special session.[12] When it became clear that the court would order his ouster, he signed a Declaration of Independence, invoked martial law, and called out the National Guard.[13] Nonetheless, when his own officers refused to recognize him as the legal head of state, he left office in July 1934. As with Adam Clayton Powell, however, the people of the State still wanted him. In 1937 they re-elected him Governor and, in 1940, they sent him to the United States Senate.

During the swearing-in ceremonies, Senator Barkley drew attention to certain complaints field against Langer by citizens of North Dakota, yet asked that he be allowed to take the oath of office "without prejudice, which is a two-sided proposition—without prejudice to the Senator, and without prejudice to the Senate in the exercise of its rights [to exclude him]." [14]

The matter of Langer's qualifications to serve in the Senate was referred to committee which held confidential hearings on January 9 and 16, 1941, and open hearings on November 3 and 18, 1941. By a vote of 14 to 2, the committee reported that a majority of the Senate had jurisdiction under Art. I, § 5, cl. 1, of the Constitution to exclude Langer; and by a vote of 13 to 3, it reported its recommendation that Langer not be seated.[15]

The charges against Langer were various. As with Powell, they included claims that he had misappropriated public funds [16] and that he had interfered with the judicial process in a way that beclouded the dignity of Congress.[17] Reference was also made to his professional ethics as a lawyer.[18]

Langer enjoyed the powerful advocacy of Senator Murdock from Utah. The Senate debate itself raged for over a year.[19] Much of it related to purely factual allegations of "moral turpitude." Some of it, however, was addressed to the power of the Senate under Art. I, § 5, cl. 1, to exclude a member-elect for lacking qualifications not enumerated in Art. I, § 3.

"Mr. MURDOCK. [U]nder the Senator's theory that the Senate has the right to add qualifications which are not specified in the Constitution, does the Senator believe that the Senate could adopt a rule specifying intellectual and moral qualifications? [20]

"Mr. LUCAS. The Senate can do anything it wants to do . . . . Yes; the Senate can deny a person his seat simply because it does not like the cut of his jaw, if it wishes to." [21]

Senator Murdock argued that the only qualifications for service in the Senate were those enumerated in the Constitution; that Congress had the power to review those enumerated qualifications; but that it could not—while purporting to "judge" those qualifications—in reality add to them.

"Mr. LUCAS. The Senator referred to article I, section 5. What does he think the framers of the Constitution meant when they gave to each House the power to determine or to judge the qualifications, and so forth, of its own Members? [22]

"Mr. MURDOCK. I construe the term 'judge' to mean what it is held to mean in its common, ordinary usage. My understanding of the definition of the word 'judge' as a verb is this: When we judge a thing it is supposed that the rules are laid out; the law is there for us to look at and to apply to the facts.

"But whoever heard the word 'judge' used as meaning the power to add to what is already the law?" [23]

It was also suggested from the floor that the enumerated qualifications in § 3 were only a *minimum* which the Senate could supplement; and that the Founding Fathers so intended by using words of the negative. To which Senator Murdock replied—

"Mr. President, I think it is the very distinguished and able Senator from Georgia who makes the contention that the constitutional provisions relating to qualifications, because they are stated in the negative—that is, 'no person shall be a Senator'—are merely restrictions or prohibitions on the State; but —and I shall read it later on—when we read what Madison said, when we read what Hamilton said, when we read what the other framers of the Constitution said on that question, there cannot be a doubt as to what they intended and what they meant.[24]

* * * * *

"Madison knew that the qualifications should be contained in the Constitution and not left to the whim and caprice of the legislature.[25]

* * * * *

"Bear in mind, that the positive or affirmative phraseology was not changed to the negative by debate or by amendment in the convention, but it was changed by the committee of which Madison was a member, the committee on style." [26]

The Senate was nonetheless troubled by the suggestion that the Constitution compelled it to accept anyone whom the people might elect, no matter how egregious and even criminal his behavior. No need to worry, said Murdock. It is true that the Senate cannot invoke its majority power to "judge" under Art. I, § 5, cl. 1, as a device for excluding men elected by the people who possess the qualifications enumerated by the Constitution. But it does have the power under Art. I, § 5, cl. 2, to expel anyone it designates by a two-thirds vote. Nonetheless, he urged the Senate not to bypass the two-thirds requirement for expulsion by wrongfully invoking its power to exclude.[27]

Mr. LUCAS. The position the Senator from Utah takes is that it does not make any difference what a Senator does in the way of crime, that whenever he is elected by the people of his State, comes here with bona fide credentials, and there is no fraud in the election, the Senate cannot refuse to give him the oath. That is the position the Senator takes?

"Mr. MURDOCK. That is my position; yes.[28]

* * * * *

"My position is that we do not have the right to exclude anyone who comes here clothed with the proper credentials and possessing the constitutional qualifications. My position is that we do not have the right under the provision of the Constitution to which the Senator from Florida referred, to add to the qualifications. My position is that the State is the sole judge of the intellectual and the moral qualifications of the representatives it sends to Congress." [29]

"Mr. MURDOCK [quoting Senator Philander Knox]. 'I know of no defect in the plain rule of the Constitution for which I am contending. . . . I cannot see that any danger to the Senate lies in the fact than an improper character cannot be excluded without a two-thirds vote. It requires the unanimous vote of a jury to convict a man accused of a crime; it should require, and I believe that it does require, a two thirds vote to eject a Senator from his position of honor and power, to which he has been elected by a sovereign State.' " [30]

Thus, after a year of debate, on March 27, 1942, the Senate overruled the recommendation of its committee and voted 52 to 30 to seat Langer.

I believe that Senator Murdock stated the correct constitutional principle governing the present case.

FOOTNOTES

[1] U.S. Const., Art. I, § 2, cl. 2.

"No Person shall be a Representative who shall not have attained to the Age of twenty-five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen."

[2] The Constitutional Convention had the occasion to consider several proposals for giving Congress discretion to shape its own qualifications for office and explicitly rejected them. James Madison led the opposition by arguing that such discretion would be "an improper and dangerous power in the Legislature. The qualifications of electors and elected were fundamental articles in a Republican Gov't and ought to be fixed by the Constitution. If the Legislature could regulate those of either, it can by degrees subvert the Constitution." 2 Farrand, Records of the Federal Convention of 1787 249–251 (1911). Alexander Hamilton echoed that same conclusion:

"The qualifications of the persons who may choose or be chosen, as has been remarked upon other occasions, are defined and fixed

in the Constitution, and are unalterable by the legislature." The Federalist No. 60, at 371 (1961).

And so, too, the early Congress of 1807 decided to seat Representative-elect William McCreery on the ground that its power to "judge" was limited by the enumerated qualifications.

"The Committee of Elections considered the qualifications of members to have been unalterably determined by the Federal Convention, unless changed by an authority equal to that which framed the Constitution at first. . . . Congress, by the Federal Constitution, are not authorized to prescribe the qualifications of their own members, but they are authorized to judge of their qualifications; in doing so, however, they must be governed by the rules prescribed by the Federal Constitution, and by them only." 17 Annals of Congress 871 (1807) (remarks of Rep. Findley, Chairman of House Committee of Elections).

Constitutional scholars of two centuries have reaffirmed the principle that congressional power to "judge" the qualifications of its members is limited to those enumerated in the Constitution. J. Story, Commentaries on the Constitution 462 (5th ed. 1902); C. Warren, The Making of the Constitution 420–426 (1937). See also remarks by Emmanuel Celler, Chairman of the House Select Committee which inquired into the qualifications of Adam Clayton Powell, Jr., and which recommended seating him:

"The Constitution lays down three qualifications for one to enter Congress—age, inhabitancy, citizenship. Mr. Powell satisfies all three. The House cannot add to these qualifications." CONGRESSIONAL RECORD, vol. 113, pt. 4, p. 4998.

[3] *Baker* v. *Carr*, 369 U.S. 186, 242, n. 2 (DOUGLAS, J., concurring).

[4] The question whether Congress has authority under the Constitution to add to enumerated qualifications for office is itself a federal question within the particular expertise of this Court. *Baker* v. *Carr*, 369 U.S. 186, 211. Where that authority has been exceeded, redress may be properly sought here. *Marbury* v. *Madison*, 1 Cranch. 137. Congress itself suspected no less in deciding to exclude Rep. Powell.

"[C]ases may readily be postulated where the action of a House in excluding or expelling a Member may directly impinge upon rights under other provisions of the Constitution. In such cases, the unavailability of judicial review may be less certain. Suppose, for example, that a Member was excluded or expelled because of his religion or race, contrary to the equal protection clause, or for making an unpopular speech protected by the first amendment. . . . Exclusion of a Member-elect on grounds other than age, citizenship, or inhabitancy could raise an equally serious constitutional issue." H.R. Rep. No. 27, 90th Cong., 1st Sess., 30 (1967).

See also CONGRESSIONAL RECORD, vol. 113, pt. 4, p. 4994.

[5] Case of Victor Berger, 6 C. Cannon, Precedents of the House of Representatives of the United States, § 56 (1935).

[6] 6 C. Cannon, Precedents of the House of Representatives of the United States, §122 (1935).

[7] See, *e.g.*, *Bond* v. *Floyd*, 385 U.S. 116.

[8] 1 A. Hinds, Precedents of the House of Representatives of the United States, § 481 (1907).

[9] CONGRESSIONAL RECORD, vol. 113, pt. 4, p. 4997.

[10] S. Doc. No. 71 on Senate Election, Expulsion and Censure Cases from 1789 to 1960, 87th Cong., 2d Sess., 140 (1962).

[11] Hearings on A Protest to the Seating of William Langer, before the Senate Committee on Privileges and Elections, 77th Cong., 1st Sess., at 820 (Nov. 3, 18, 1941) (hereinafter Hearings).

[12] Hearings, at 821.

[13] Hearings, at 820.

[14] 87 Cong. Rec. 1–2 (1941).

[15] S. Rep. No. 1010, 77th Cong., 2d Sess. (1942).

[16] It was alleged that he had conspired as Governor to have municipal and county bonds sold to a friend of his who made a profit of $300,000 on the purchase, and purportedly rebated as much as $56,000 to Langer himself. Hearings, at 822–823.

[17] At the retrial of his conviction for conspiring to interfere with the enforcement of federal law, he was said to have paid money to have a friend of his, Judge Wyman, be given control of the litigation, and to have "meddled" with the jury. Hearings, at 20–42, 120–130.

[18] He was charged as a lawyer with having accepted $2,000 from the mother of a boy in prison on the promise that he would obtain his pardon, when he knew, in fact, that a pardon was out of the question. He was also said to have counseled a defendant-client of his to marry the prosecution's chief witness in order to prevent her from testifying against him. And finally, it was suggested that he once bought an insurance policy during trial from one of the jurors sitting in judgment of his client. Hearings at 820–830.

[19] 87 Cong. Rec. 3–4, 34, 460 (1941); 88 Cong. Rec. 822, 828, 1253, 2077, 2165, 2239, 2328, 2382, 2412, 2472, 2564, 2630, 2699, 2759, 2791, 2801, 2842, 2858, 2914, 2917, 2959, 2972, 2889, 3038, 3051, 3065, 5668 (1942).

[20] 88 Cong. Rec. 2041.

[21] *Ibid.*

[22] 88 Cong. Rec. 2474.

[23] *Ibid.*

[24] 88 Cong. Rec. 2474.

[25] 88 Cong. Rec. 2483.

[26] 88 Cong. Rec. 2484.

[27] Although the House excluded Adam Clayton Powell by over two-thirds vote, they were operating on the assumption that only a majority was needed. For the suggestion that the House could never have rallied the votes to exclude Powell on the basis of a two-thirds ground rule, see Note, 14 How. L. J. 162 (1968); Comment, 42 N. Y. U. L. Rev. 716 (1967).

[28] 88 Cong. Rec. 2488.

[29] 88 Cong. Rec. 2490.

[30] 88 Cong. Rec. 2488. Senator Knox of Pennsylvania had defended Senator-elect Reed Smoot of Utah in 1903 against charges that he ought to be excluded because of his affiliation with a group (Mormons) that countenanced polygamy. S. Doc. No. 71, 87th Cong., 2d Sess., at 97.

OPINION OF MR. JUSTICE STEWART, DISSENTING

I believe that events which have taken place since certiorari was granted in this case on November 18, 1968, have rendered it moot, and that the Court should therefore refrain from deciding the novel, difficult, and delicate constitutional questions which the case presented at its inception.

I

The essential purpose of this lawsuit by Congressman Powell and members of his constituency was to regain the seat from which he was barred by the 90th Congress. That purpose, however, became impossible of attainment on January 3, 1969, when the 90th Congress passed into history and the 91st Congress came into being. On that date, the petitioner's prayer for a judicial decree restraining enforcement of House Resolution No. 278 and commanding the respondents to admit Congressman Powell to membership in the 90th Congress became incontestably moot.

The petitioners assert that actions of the House of Representatives of the 91st Congress have prolonged the controversy raised by Powell's exclusion and preserved the need for a judicial declaration in this case. I believe, to the contrary, that the conduct of the present House of Representatives confirms the mootness of the petitioners' suit against the 90th Congress. Had Powell been excluded from the 91st Congress, he might argue that there was a "continuing controversy" concerning the exclusion attacked in this case.[1] And such an argument might be sound even though the present House of Representatives is a distinct legislative body rather than a continuation of its predecessor,[2] and though any grievance caused by conduct of the 91st Congress is not redressable in this action. But on January 3, 1969, the House of Representatives of the 91st Congress admitted Congressman Powell to membership, and he now sits as the Representative of the 18th Congressional District of New York. With the 90th Congress terminated and Powell now a member of the 91st, it cannot seriously be contended that there remains a judicial controversy between these parties over the power of the House of Representatives to exclude Powell and the power of a court to order him reseated. Understandably, neither the Court nor the petitioners advance the wholly untenable proposition that the continuation of this case can be founded on the infinitely remote possibility that Congressman Powell, or any other Representative, may someday be excluded for the same reasons or in the same manner. And because no foreseeable possibility of such future conduct exists, the respondents have met their heavy burden of showing that "subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." *United States* v. *Concentrated Phosphate Export Assn.*, 393 U.S. 199, 203.[3]

The petitioners further argue that this case cannot be deemed moot because of the principle that "the voluntary abandonment of a practice does not relieve a court of adjudicating its legality . . . ." *Gray* v. *Sanders*, 372 U. S. 368, 376.[4] I think it manifest, however, that this principle and the cases enunciating it have no application to the present case. In the first place, this case does not involve "the voluntary abandonment of a practice." Rather it became moot because of an event over which the respondents had no control—the expiration of the 90th Congress. Moreover, unlike the cases relied on by the petitioners, there has here been no on-going course of conduct of indefinite duration against which a permanent injunction is necessary. Thus, it cannot be said of the respondents' actions in this case, as it was of the conduct sought to be enjoined in *Gray*, for example, that "the practice is deeply rooted and long standing," *id.*, or that, without judicial relief, the respondents would be "free to return to [their] old ways." *United States* v. *W. T. Grant Co.*, 345 U. S. 629, 632.[5] Finally, and most important, the "voluntary abandonment" rule does not dispense with the requirement of a continuing controvery, nor could it under the definition of the judicial power in Article III of the Constitution. Voluntary cessation of unlawful conduct *does* make a case moot "if the defendant can demonstrate that 'there is no reasonable expectation that the wrong will be repeated.'" *Id.*, at 633.[6] Since that is the situation here, the case would be moot even if it could be said that it became so by the House's "voluntary abandonment" of its "practice" of excluding Congressman Powell.

The petitioners' proposition that conduct of the 91st Congress has perpetuated the controversy is based on the fact that House Resolution No. 2—the same resolution by which the House voted to seat Powell—fined him $25,000, and provided that his seniority was to commence as of the date he became a member of the 91st Congress.[7] That punishment, it is said, "arises out of the prior actions of the House which originally impelled this action." It is indisputable, however, that punishment of a House member

Footnotes at end of article.

involves constitutional issues entirely distinct from those raised by exclusion,[8] and that a punishment in one Congress is no legal sense a "continuation" of an exclusion from the previous Congress. A judicial determination that the exclusion was improper would have no bearing on the constitutionality of the punishment, nor any conceivable practical impact on Powell's status in the 91st Congress. It is thus clear that the only connection between the exclusion by the 90th Congress and the punishment by the 91st is that they were evidently based on the same asserted derelictions of Congressman Powell. But this action was not brought to exonerate Powell or to expunge the legislative findings of his wrong-doing; its only purpose was to restrain the action taken in consequence of those findings—Powell's exclusion.

Equally without substance is the petitioners' contention that this case is saved from mootness by application of the asserted "principle" that a case challenging allegedly unconstitutional conduct cannot be rendered moot by further unconstitutional conduct of the defendants. Under this hypothesis, it is said that the "Court can not determine that the conduct of the House on January 3, 1969 has mooted this controversy without inferentially, at least, holding that the action of the House of that day was legal and constitutionally permissible." If there is in our jurisprudence any doctrine remotely resembling the petitioners' theory—which they offer without reference to any authority—it has no conceivable relevance to this case. For the events of January 3, 1969, that made this case moot were the termination of the 90th Congress and Powell's seating in the 91st, *not* the punishment which the petitioners allege to have been unconstitutional. That punishment is wholly irrelevant to the question of mootness and is in no wise before the Court in this case.

The passage of time and intervening events have, therefore, made it impossible to afford the petitioners the principal relief they sought in this case. If any aspect of the case remains alive, it is only Congressman Powell's individual claim for the salary of which he was deprived by his absence from the 90th Congress.[9] But even if that claim can be said to prevent this controversy from being moot, which I doubt, there is no need to reach the fundamental constitutional issues that the Court today undertakes to decide.

This Court has not in the past found that an incidental claim for back pay preserves the controversy between a legislator and the legislative body which evicted him, once the term of his eviction has expired. *Alejandrino* v. *Quezon*, 271 U.S. 528, was a case nearly identical to that before the Court today. The petitioner was a member of the Senate of the Philippines who had been suspended for one year for assaulting a colleague. He brought an action in the Supreme Court of the Philippines against the elected members of the Senate[10] and its officers and employees (the President, Secretary, Sergeant-at-Arms, and Paymaster), seeking a writ of mandamus and an injunction restoring him to his seat and to all the privileges and emoluments of office. The Supreme Court of the Philippines dismissed the action for want of jurisdiction and Alejandrino brought the case here,[11] arguing that the suspension was not authorized by the Philippine Autonomy Act, a statute which incorporated most of the provisions of Article I of the United States Constitution.[12]

Because the period of the suspension had expired while the case was pending on certiorari, a unanimous Court, in an opinion by Chief Justice Taft, vacated the judgment and remanded the case with directions to dismiss it as moot. To Alejandrino's claim that his right to back pay kept the case alive, the Court gave the following answer, which, because of its particular pertinency to this case, I quote at length:

"It may be suggested, as an objection to our vacating the action of the court below, and directing the dismissal of the petition as having become a moot case, that, while the lapse of time has made unnecessary and futile a writ of mandamus to restore Senator Alejandrino to the Island Senate, there still remains a right on his part to the recovery of his emoluments, which were withheld during his suspension, and that we ought to retain the case for the purpose of determining whether he may not have a mandamus for this purpose. . . . It is difficult for the Court to deal with this feature of the case, which is really only a mere incident to the main question made in the petition and considered in the able and extended brief of counsel for the petitioner, and the only brief before us. That brief is not in any part of it directed to the subject of emoluments, nor does it refer us to any statute or to the rules of the Senate by which the method of paying Senators' salaries is provided, or in a definite way describe the duties of the officer or officers or committee charged with the ministerial function of paying them.

* * * * *

". . . the remedy of the Senator would seem to be by mandamus to compel such official in the discharge of his ministerial duty to pay him the salary due, and the presence of the Senate as a party would be unnecessary. Should that official rely upon the resolution of the Senate as a reason for refusing to comply with his duty to pay Senators, the validity of such a defense and the validity of the resolution might become a judicial question affecting the personal right of the complaining Senator, properly to be disposed of in such action, but not requiring the presence of the Senate as a party for its adjudication. The right of the petitioner to his salary does not therefore involve the very serious issue raised in this petition as to the power of the Philippine Supreme Court to compel by mandamus one of the two legislative bodies constituting the legislative branch of the Government to rescind a resolution adopted by it in asserted lawful discipline of one of its members, for disorder and breach of privilege. We think, now that the main question as to the validity of the suspension has become moot, the incidental issue as to the remedy which the suspended Senator may have in recovery of his emoluments, if illegally withheld, should properly be tried in a separate proceeding against an executive officer or officers as described. As we are not able to derive from the petition sufficient information upon which properly to afford such a remedy, we must treat the whole cause as moot and act accordingly. This action on our part of course is without prejudice to a suit by Senator Alejandrino against the proper executive officer or committee by way of mandamus or otherwise to obtain payment of the salary which may have been unlawfully withheld from him." 271 U.S., at 533, 534–535.[13]

Both of the factors on which the Court relied in *Alejandrino* are present in this case. Indeed, the salary claim is an even more incidental and subordinate aspect of this case than it was of *Alejandrino*.[14] And the availability of effective relief for that claim against any of the present respondents is far from certain. As in *Alejandrino*, the briefs and memoranda submitted by the parties in this case contain virtually no discussion of this question—the only question of remedy remaining in the case. It appears from relevant provisions of law, however, that the Sergeant-at-Arms of the House—an official newly elected by each Congress[15]—is responsible for the retention and disbursement to Congressmen of the funds appropriated for their salaries. These funds are payable from the United States Treasury[16] upon requisitions presented by the Sergeant-at-Arms, who is entrusted with keeping the books and accounts "for the compensation and mileage of Members."[17] A Congressman who has presented his credentials and taken the oath of office[18] is entitled to be paid monthly on the basis of certificates of the Clerk[19] and Speaker of the House.[20] Powell's prayer for a mandamus and an injunction against the Sergeant-at-Arms is presumably based on this statutory scheme.

Several important questions remain unanswered, however, on this record. Is the Sergeant-at-Arms the only necessary defendant? If so, the case is surely moot as to the other respondents, including the House members, and they should be dismissed as parties on that ground rather than after resolution of difficult constitutional questions under the Speech and Debate Clause. But it is far from clear that Powell has an appropriate or adequate remedy against the remaining respondents. For if the Speaker does not issue the requisite certificates and Congress does not rescind Resolution 278, can the House agents be enjoined to act in direct contravention of the orders of their employers? Moreover, the office of Sergeant-at-Arms of the 90th Congress has now expired, and the present Sergeant-at-Arms serves the 91st Congress. If he were made a party in that capacity, would he have the authority—or could the 91st Congress confer the authority—to disburse money for a salary owed to a Representative in the previous Congress, particularly one who never took the oath of office? Presumably funds have not been appropriated to the 91st Congress or requisitioned by its Sergeant-at-Arms for the payment of salaries to members of prior Congresses. Nor is it ascertainable from this record whether money appropriated for Powell's salary by the 90th Congress, if any, remains at the disposal of the current House and its Sergeant-at-Arms.[21]

There are, then substantial questions as whether, on his salary claim, Powell could obtain relief against any or all of these respondents. On the other hand, if he was entitled to salary as a member of the 90th Congress, he has a certain and completely satisfactory remedy in an action for a money judgment against the United States in the Court of Claims.[22] While that court could not have ordered Powell reseated or entered a declaratory judgment on the constitutionality of his exclusion,[23] it is not disputed that the Court of Claims could grant him a money judgment for lost salary on the ground that his discharge from the House violated the Constitution. I would remit Congressman Powell to that remedy, and not simply because of the serious doubts about the availability of the one he now pursues. Even if the mandatory relief sought by Powell is appropriate and could be effective, the Court should insist that the salary claim be litigated in a context that would clearly obviate the need to decide some of the constitutional questions with which the Court grapples today, and might avoid them altogether.[24] In an action in the Court of Claims for a money judgment against the United States, there would be no question concerning the impact of the Speech and Debate Clause on a suit against members of the House of Representatievs and their agents, and questions of jurisdiction and justiciability would, if raised at all, be in vastly different and more conventional form.

In short, dismissal of Powell's action against the legislative branch would not in the slightest prejudice his money claim,[25] and it would avoid the necessity of deciding constitutional issues which, in the petitioners' words, "touch the bedrock of our political system [and] strike at the very heart of representative government." If the fundamental principles restraining courts from unnecessarily or prematurely reaching out to decide grave and perhaps unsettling constitutional questions retain any vitality, see *Ashwander*

Footnotes at end of article.

v. *TVA*, 297 U.S. 288, 346–348 (Brandeis, J., concurring), surely there have been few cases more demanding of their application than this one. And those principles are entitled to special respect in suits, like this suit, for declaratory and injunctive relief, which it is within a court's broad discretion to withhold. "We have cautioned against declaratory judgments on issues of public moment, even falling short of constitutionality, in speculative situations." *Public Affairs Press* v. *Rickover*, 369 U.S. 111, 112. "Especially where governmental action is involved, courts should not intervene unless the need for equitable relief is clear, not remote or speculative." *Eccles* v. *Peoples Bank of Lakewood Village*, 333 U.S. 426, 431.

If this lawsuit is to be prolonged, I would at the very least not reach the merits without ascertaining that a decision can lead to some effective relief. The Court's remand for determination of that question implicitly recognizes that there may be no remaining controversy between the Petitioner Powell and any of these respondents redressable by a court, and that its opinion today may be wholly advisory. But I see no good reason for any court even to pass on the question of the availability of relief against any of these respondents. Because the essential purpose of the action against them is no longer attainable and Powell has a fully adequate and far more appropriate remedy for his incidental back pay claim, I would withhold the discretionary relief prayed for and terminate this lawsuit now. Powell's *claim* for salary may not be dead, but this *case* against all these respondents is truly moot. Accordingly, I would vacate the judgment below and remand the case with directions to dismiss the complaint.

FOOTNOTES

[1] 1 See, *e.g.*, *United States* v. *Concentrated Phosphate Export Assn.*, 393 U.S. 199, 202–204; *Carroll* v. *President and Commissioners of Princess Ann*, 393 U.S. 175, 178–179.

[2] See *Gojack* v. *United States*, 384 U.S. 702, 707, n. 4 ("Neither the House of Representatives nor its committees are continuing bodies."); *McGrain* v. *Daugherty*, 273 U.S. 135, 181. Forty-one of the present members of the House were not members of the 90th Congress; and two of the named defendants in this action, Messrs. Moore and Curtis, are no longer members of the House of Representatives. Moreover, the officer-employees of the House, such as the Sergeant-at-Arms, are re-elected by each new Congress. See n. 15, *infra*.

[3] See also *United States* v. *W. T. Grant Co.*, 345, U.S. 629, 633; *United States* v. *Aluminum Co. of America*, 148 F. 2d 416, 448. The Court has only recently concluded that there was no "controversy" in *Golden* v. *Zwickler*, —— U.S. ——, because of "the fact that it was most unlikely that the congressman would again be a candidate for Congress." *Id.*, at ——. It can hardly be maintained that the likelihood of the House of Representatives' again excluding Powell is any greater.

[4] See also *United States* v. *W. T. Grant Co.*, 345 U.S. 629, 632–633; *Local 74, United Bhd of Carpenters & Joinders* v. *NLRB*, 341 U.S. 707, 715; *Walling* v. *Helmerich & Payne, Inc.*, 323 U.S. 37, 43; *Hecht Co.* v. *Bowles*, 321 U.S. 321, 327; *United States* v. *Trans-Missouri Freight Assn.*, 166 U.S. 290, 307–310.

[5] With the exception of *Gray*, the "continuing controversy" cases relied on by the petitioners were actions by the Government or its agencies to halt illegal conduct of the defendants, and, by example, of others engaged in similar conduct. See cases cited, *supra*, nn. 1, 3, 4. The principle that voluntary abandonment of an illegal practice will not make an action moot is especially, if not exclusively, applicable to such public law enforcement suits.

"Private parties may settle their controversies at any time, and rights which a plaintiff may have had at the time of the commencement of the action may terminate before judgment is obtained or while the case is on appeal, and in any such case the court, being informed of the facts, will proceed no further in the action. Here, however, there has been no extinguishment of the rights . . . of the public, the enforcement of which the Government has endeavored to procure by a judgment of a court . . . . The defendants cannot foreclose those rights nor prevent the assertion thereof by the Government as a substantial trustee for the public under the act of Congress, by [voluntary cessation of the challenged conduct]." *United States* v. *Trans-Missouri Freight Assn.*, 166 U.S., at 309. The considerations of public enforcement of a statutory or regulatory scheme which inhere in those cases are not present in this litigation.

[6] Certainly in every decision relied on by the petitioners the Court did not reject the mootness argument solely on the ground that the illegal practice had been voluntarily terminated. In each it proceeded to determine that there was in fact a continuing controversy.

[7] House Resolution No. 2 provided in pertinent part:

"(2) That as punishment Adam Clayton Powell be and he hereby is fined the sum of $25,000, said sum to be paid to the Clerk to be disposed of by him according to law. The Sergeant at Arms of the House is directed to deduct $1,150 per month from the salary otherwise due the said Adam Clayton Powell, and pay the same to said Clerk until said $25,000 fine is fully paid.

"(3) That as further punishment the seniority of the said Adam Clayton Powell in the House of Representatives commence as of the date he takes the oath as a Member of the 91st Congress."

The petitioners' argument that the case is kept alive by Powell's loss of seniority, see *ante*, at —, is founded on the mistaken assumption that the loss of seniority is attributable to the exclusion from the 90th Congress and that seniority would automatically be restored if that exclusion were declared unconstitutional. But the fact is that Powell was stripped of seniority by the action of the 91st Congress, action which is not involved in this case and which would not be affected by judicial review of the exclusion from the 90th Congress. Moreover, even if the conduct of the 91st Congress were challenged in this case, the Court would clearly have no power whatsoever to pass upon the propriety of such internal affairs of the House of Representatives.

[8] Article I, § 5, of the Constitution specifically empowers each House to "punish its Members for disorderly Behaviour."

[9] The salary claim is personal to Congressman Powell, and the other petitioners therefore clearly have no further interest in this lawsuit.

[10] The Philippines Senate was composed of 24 Senators, 22 of whom were elected, and two of whom were appointed by the Governor General. Alejandrino was one of the two appointees. See 271 U.S., at 531–532.

[11] Under the Philippine Autonomy Act, 39 Stat. 545, this Court had jurisdiction to examine by writ of error the final judgments and decrees of the Supreme Court of the Philippine Islands in cases under the Constitution or statutes of the United States. A subsequent statute substituted the writ of certiorari, 39 Stat. 726.

[12] "Section 18 [of the Autonomy Act] provides that the Senate and House respectively shall be the sole judges of the elections, returns and qualifications of their elective members, and each House may determine the rules of its proceedings, punish its members for disorderly behavior, and with the concurrence of two-thirds expel an elective member. The Senators and Representatives shall receive an annual compensation for their services to be ascertained by law and paid out of the Treasury of the Philippine Islands. Senators and Representatives shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses and in going to and returning from the same; and for any speech or debate in either House they shall not be questioned in any other place." 271 U.S., at 532.

[13] The petitioners rely on the following passage from *Bond* v. *Floyd*, 385 U.S. 116, 128, n. 4, as dispositive of their contention that the salary claim prevents this case from being moot:

"A question was raised in oral argument as to whether this case might not be moot since the session of the House which excluded Bond was no longer in existence. The State has not pressed this argument, and it could not do so, because the State has stipulated that if Bond succeeds on this appeal he will receive back salary for the term from which he was excluded."

I do not believe that this off-hand dictum in *Bond* is determinative of the issue of mootness in this case. In the first place, as the Court in *Bond* noted, it was not there contended by any party that the case was moot. Moreover, contrary to the implication of the statement, the legislative term from which Bond was excluded had not ended at the time of the Court's decision. (The Court's decision was announced on December 5, 1966; Bond's term of office expired on December 31, 1966.) In any event, he had not been seated in a subsequent term, so the continuing controversy had not been rendered clearly moot by any action of the Georgia House, as it has here by the House of Representatives of the 91st Congress. No one suggested in *Bond* that the money claim was the only issue left in the case. Furthermore, the considerations which governed the Court's decision in *Alejandrino* were simply not present in *Bond*. Because of the State's stipulation, there was no doubt, as there is here, see *infra*, at ——, that the Court's decision would lead to effective relief with respect to Bond's salary claim. And finally, there was no suggestion that Bond had an alternative remedy, as Powell has here, see *infra*, at ——, by which he could obtain full relief without requiring the Court to decide novel and delicate constitutional issues.

[14] *Alejandrino* was the only petitioner in the case, and since he was an appointed Senator, it appears that there was no group of voters who remained without representation of their choice in the Senate during his suspension.

[15] 2 U.S.C. § 83.

[16] U.S. Const., Art. I, § 6; 2 U.S.C. § 47.

[17] 2 U.S.C. §§ 80, 78.

[18] 2 U.S.C. § 35.

[19] 2 U.S.C. § 34.

[20] 2 U.S.C. § 48.

[21] The respondents allege without contradiction that the Sergeant-at-Arms does not have sufficient funds to pay Congressman Powell's back salary claims. Separate appropriations for the salaries of Congressmen are made in each fiscal year, see, *e.g.*, 80 Stat. 354, 81 Stat. 127, 82 Stat. 398, and, according to the respondents, "it is the custom of the Sergeant to turn back to the Treasury all unexpended funds at the end of each fiscal year." Thus, the only funds still held by the Sergeant are said to be those appropriated for the present fiscal year commencing July 1, 1968.

[22] "The Court of Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress, ..." 28 U.S.C. § 1491. The district courts have concurrent jurisdiction over such claims only in amounts less than $10,000. 28 U.S.C. § 1346.

[23] *United States* v. *King*, —— U.S. ——. The petitioners suggest that the inability of the Court of Claims to grant such relief might make any remedy in that court inadequate. But since Powell's only remaining interest in the case is to collect his salary, a

money judgment in the Court of Claims would be just as good as, and probably better than, mandatory relief against the agents of the House. The petitioners also suggest that the Court of Claims would be unable to grant relief because of the pendency of Powell's claim in another court, 28 U.S.C. § 1500, but that would, of course, constitute no obstacle if, as I suggest, the Court should order this action dismissed on grounds of mootness.

[24] It is possible, for example, that the United States in such an action would not deny Powell's entitlement to the salary but would seek to offset that sum against the amounts which Powell was found by the House to have appropriated unlawfully from Government coffers to his own use.

[25] Relying on *Bank of Marin* v. *England*, 385 U.S. 99, 101, the petitioners complain that it would impose undue hardship on Powell to force him to "start all over again" now that he has come this far in the present suit. In view of the Court's remand of this case for further proceedings with respect to Powell's remedy, it is at least doubtful that remitting him to an action in the Court of Claims would entail much more cost and delay than will be involved in the present case. And the inconvenience to litigants of further delay or litigation has never been deemed to justify departure from the sound principle, rooted in the Constitution, that important issues of constitutional law should be decided only if necessary and in cases presenting concrete and living controversies.

PRO DDT: ITS USE SAVES UNTOLD LIVES

(Mr. WHITTEN asked and was given permission to extend his remarks at this point in the RECORD and to include a letter from Thomas H. Jukes.)

Mr. WHITTEN. Mr. Speaker, the attacks on essential chemical pesticides, insecticides and fungicides continues. These attacks threaten our standard of living, our greatly improved health, and our increasing length of life. Perhaps the most bitter attack has been directed toward DDT.

As perhaps most of you know, as chairman of the Agriculture Appropriations Subcommittee I have done a great deal of study in this area, and wrote the book "That We May Live," published by D. Van Nostrand Co., Princeton, N.J.

In this connection, I feel it would be very much worthwhile for the membership to read the letter which I have attached to my remarks, sent by Mr. Thomas H. Jukes to Senator GAYLORD NELSON in response to a speech made by Senator NELSON on the Senate floor on May 5, 1969, which appears on page 11348 of the CONGRESSIONAL RECORD of that date. Mr. Jukes is a biochemist, a professor of medical physics, and associate director of the space sciences laboratory of the University of California at Berkeley.

The letter follows:

BERKELEY, CALIF., *May 14, 1969.*

HON. GAYLORD NELSON,
Senate Office Building,
Washington, D.C.

DEAR SENATOR NELSON: I have read with interest your remarks on page 11348 of the *Congressional Record* for May 5, 1969, and I hope you will permit me to discuss some of the matters you have mentioned.

(1) Your first point concerns the selective toxicity of DDT. You state, "Most pesticides, especially DDT and the chlorinated hydrocarbons, cannot distinguish between man's friends and man's enemies. They are almost as lethal to the beneficial insects and creatures as they are to destructive ones."

DDT is relatively innocuous, at recommended conditions for use, to warm-blooded animals and it kills some of the most dangerous pests that confront us; pests that are not deadly in themselves, but are carriers of lethal diseases, including malaria, yellow fever, typhus fever, plague and many others. In addition, many intestinal diseases are carried by houseflies. What "friends" of man can outrank this array of mortal enemies? Some beneficial insects are killed by DDT, of course, but some, such as honeybees, are resistant. So are earthworms (Scientific American, April 1969). I would not suggest that we can get "something for nothing," but the balance is heavily in favor of DDT. Wild animals benefit from DDT, because parasitic insects, ticks and lice suck the blood of animals and carry animal diseases including cattle fever, piroplasmosis, sleeping sickness and heartworm. Even oysters have been claimed to benefit from destruction of barnacles by DDT.

These facts have been lost in the clamor. I refer you to the monumental bibliography of 3404 references compiled by the Division of Biology and Agriculture, National Academy of Sciences, June 1959 (Technical Report, WADC, 55–16, Volume III).

The balance is overwhelmingly in favor of DDT. No humanitarian, cognizant of malaria and typhus, can reach any other conclusion.

(2) Your second point states,

"From the information that has been available to my office, only a few studies—including one at a prison and another at a chemical plant—have been reported. One of the greatest difficulties in evaluating the effects of pesticides on human health has been the lack of any comprehensive research."

The two studies which you mention, both of which were carried out by the U.S. Public Health Service, were comprehensive in scope and demonstrated the breakdown of DDT and excretion of a water-soluble metabolite of DDT by the human body. Moreover, the Montrose Study reached back for 19 years, a period which is almost equal to a generation.

I do not think we can expect so long an experiment to be repeated. The Georgia prisoner study involved a tremendous amount of work, because the subjects were dosed daily for about two years. How many scientists can be induced to spend their time in repeating toxicity tests with a substance that has been found harmless? There is too much other work to do, with the *real* threats to our environment, such as smog and water pollution.

There are many other observations on the low toxicity of DDT, of course, such as the body-dusting program for typhus, carried out on thousands of people without adverse effects; the spraying of millions of houses in India; and other reference material which I enclose. Dr. J. M. Barnes has commented:

"Unfortunately DDT is relatively slowly metabolized and excreted by the mammal and by virtue of its solubility characteristics tends to get laid down in tissue fat. Here it would have remained as an innocent and unrecognized passenger but for the fact that the chemists invented a sensitive chemical method since further enhanced by the gas-liquid chromatographic technique capable of detecting the chlorine and indicating its source even in minute quantities. Thus it has become possible to establish an anxiety neurosis in respect to a few parts per million of a compound in a tissue such as fat where a few parts per thousand in the whole animal are of no toxicological importance. Unless epidemiological studies on the health of people who have been heavily exposed to DDT for 20 years or more reveal an unsuspected long-term toxic effect, this insecticide will go down in history as one that has killed more insects and saved more people than any other substance."

DDT in large doses (5 grams) is being used as an antidote for barbiturate poisoning in attempted suicides, so Dr. Richard Rappolt of San Francisco informs me.

(3) In your third point, you cite the concentration of DDT along the "food chain." Professor S. A. Peoples has shown that a plateau is reached at which intake is balanced by breakdown and excretion in dairy cattle. However, you support your statement by citing DDD rather than DDT. DDD is not DDT. DDD was used in Clear Lake because it is harmless to fish, in contrast to DDT. Very little water flows out of Clear Lake, so that the DDD did indeed tend to concentrate. Despite Miss Carson's lyrical prose on the grebes, the inhabitants of the Clear Lake area continued to demand gnat control. When the control program was switched to mythyl parathion, the grebes came back (see enclosure). Concentration must be expressed in terms of quantity and effect.

(4) Your fourth point is that I erred in stating that the campaign against DDT was emotional and unscientific, and you mentioned three scientists. One of them was Dr. Risebrough, who made the following emotional statement in *Nature* for January 1969:

"The peregrine falcon is a species long highly revered and respected. G. H. Thayer has described it as 'the embodiment of noble rapacity and lonely freedom'."

A reverence for rapacity, however, is not the only matter to be considered.

I listened to an impassioned speech on pesticides by Dr. Risebrough in Berkeley in December 1968, in which he impugned the motivation and integrity of various scientists whose views differed from his, including Dr. Donald Spencer, an animal ecologist who worked for 29 years with the U.S. Fish and Wildlife Service. Dr. Risebrough also said that the results reported by scientists were dependent on the origin of their research funds. Numerous other examples of emotionalism could be cited, including Miss Carson's diatribes in which she accused reputable agricultural scientists of Lysenkoism. After Miss Carson's book, many people with various types of scientific training went on a sort of emotional binge against DDT. The Audubon Society in 1962 collected dead robins; the cause of death unidentified; and exhibited them in glass cases to arouse public sentiment against pesticides. Justice Douglas stated that a new Bill of Rights was needed against the "poisoners of the human race." I enclose a recent unscientific outburst that quotes Professor Cottam of the University of Wisconsin. Many opponents of DDT attempt to reinforce their attacks by verbal assaults on the free enterprise system, which they say is responsible for pesticides. The following passage was omitted by the *Washington Post* from my article.

"Incidentally, Communist China claimed to have produced 17,478,000 tons of insecticides in 1958, and to have applied 60 pounds to every acre of cultivated land in China in the same year. Benzene hexachloride and DDT were described as 'the mainstay in chemical control' of insect pests."

I criticized the 1963 report of the Wiesner Committee (the Panel on the Use of Pesticides) without response. Only one agricultural scientist (Dr. Horsfall) was on the committee. The others had little or no involvement with problems of food production or public health. They included two biochemists, a psychologist, a physical chemist and an anatomist. Their remoteness from realism is shown in the sentence quoted by you.

"Elimination of the use of persistent toxic insecticides should be the goal."

Insecticides have to be toxic to insects, of course, so this word is superfluous. The use of *persistent* insecticides is the greatest weapon of people in the tropics against the shortening of human life. No responsible

committee should make such a statement. It contrasts poorly with the excellent recommendation, quoted by you, that was made by the Environmental Pollution Panel of the President's Science Advisory Committee in 1965. Such research has been going forward, primarily in the laboratories of chemical industry, for many years. Further sensational newspaper attacks on pesticides will discourage it. Indeed, it is my understanding that Esso has already discontinued its program in this field because of the propaganda by Rachel Carson and her imitators.

(5) My fifth point concerns your statement that Dr. Wurster has answered "forcefully and directly" the many points raised by me in my article. I am not aware that this is so. I did not see Dr. Wurster's article or manuscript prior to publication, but I have now read it in the *Congressional Record*. From it, I learn that Dr. Wurster, an organic chemist, regards the saving of millions of human lives as "glamorous"; an interesting view of the motivation of the medical profession. (Has Dr. Wurster ever had typhus fever? Two of my scientist friends had it in the 1930's, and one of them died from the disease). I do not agree with his statement that DDT residues are more widely distributed than any other man-made chemicals. What about fall-out from nuclear bomb tests? What about the numerous chemicals from smog, industrial wastes, etc., that either cannot be detected or have not been looked for? What about chlorinated biphenyls?

He speaks of four properties of DDT:

(1) "Toxicity to almost all animal life rather than simply the insect pest." This statement is meaningless unless reduced to a quantitative basis.

(2) Persistence, so that it remains in it's original toxic form for a decade or longer. This depends entirely on the environment in which DDT finds itself. It is broken down by bacteria and by resistant houseflies, for example.

(3) Mobility.

This is a general property of matter in the dispersed state.

(4) Solubility properties that cause it to be accumulated by living organisms.

This is not an injurious property *per se*—it is a property of calcium, for example. We are brought back to the point of whether the accumulation is injurious and, if so: is the balance of effects in favor of or against DDT?

His statement that "up to 90 percent of all the birds in a community" have been killed by DDT, I simply do not believe. I criticized Dr. Wurster in "Science" (February 16, 1968) for extrapolating a sample of 12 robins to a "total" of 500 to 550. I do not trust such arithmetical gymnastics. Nor do I believe for one moment his statement that "hundreds, perhaps thousands, of municipalities in the Eastern United States have killed millions of birds" with DDT.

Dr. Wurster speaks of "large fish kills" from DDT. Yet the U.S. Fish and Wildlife Service have repeatedly reported that petroleum wastes kill so many more fish than do pesticides that the number killed by pesticides is almost insignificant by comparison. The story about liver enzymes I discount because DDT has been shown to affect the enzymes in question at extremely low levels (1 ppm of diet) and much higher levels of DDT (50 to 100 ppm) have been shown not to affect reproduction in rats or in several species of birds. The studies with rats were carried out by the Food and Drug Administration.

Dr. Wurster states that it is "irrelevant" to cite data from herbivorous birds such as "pheasants, quail, ... turkeys and other game species." Dr. Wurster needs to study ornithology: turkeys in California used to be raised on grasshoppers. Moreover, the data are not irrelevant, because pheasants and quail have been shown to be resistant to high levels of DDT in the diet, and pheasants have been found to contain extremely high levels of DDT as a result of consuming rice treated with DDT. There is another defect in this argument,—the data on the carnivorous birds selected by Dr. Wurster, such as ospreys and bald eagles, are poor because these birds are currently subject to other environmental effects, and there is a lack of controlled observations as I pointed out in my article.

His statement that a million salmon fry "were killed by DDT in Michigan hatcheries" has insufficient evidence to make it acceptable, and I am told it was more likely the result of a disease in view of later findings. Nor do I accept his inference that declines in commercial species of ocean fish are due to DDT. I saw the California sardine and the soupfin shark virtually disappear from the ocean off the California coast prior to World War II. The ocean is a lot bigger than Clear Lake.

Finally, since you cited Dr. Wurster as unemotional, I point out that his statement, "The propagandists with vested interest try to tell us that the food and fiber for a starving world depend on the continued use of DDT", in addition to being nonsense (other pesticides are far more profitable) is an emotional attempt at rabble-rousing.

With best regards,

THOMAS H. JUKES.

PRICE FOR SURTAX EXTENSION

(Mr. OBEY asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. OBEY. Mr. Speaker, there are many congressional liberals who are saying, and rightly so, that the price for their vote for the surtax is meaningful tax reform. I agree with that. But there is an even higher price which we should be demanding, and that is reform in the allocation of our national resources.

We are told by some that responsible men must support an extension of that surtax—that inflation can be beaten only with tight money and with the surtax. Let us look at these allegations in light of developments in the past year.

We have had tight money—in fact, we have had five hikes in the prime interest rate in the past 7 months. The most recent 1-percent increase is the sharpest jump in this century, and the prime interest rate is now at an unprecedented level of 8½ percent. Yet high interest rates have not stopped borrowing by large borrowers; they have only increased the burden on the small ones.

Certainly past experience has shown that trying to curb inflation solely by relying on tight money is like trying to pull a freight train with a gnat.

We have had the surtax a year. It has taken millions of dollars into the Federal Treasury and out of circulation in our economy. Yet, we have had a 5.4-percent increase in the Consumer Price Index from April of 1968 to April of 1969. Certainly other measures are in order.

Leaving aside the economic arguments, one could still accept the surtax if it would provide the revenue to meet the real needs of this Nation:

First, an attack upon pollution and the destruction of our environment;

Second, an attack upon our education needs;

Third, an adequate program for medical facilities and hospital construction;

Fourth, an adequate restructuring of manpower training programs; and

Fifth, a really significant reform of out-dated and self-defeating welfare programs.

But a review of the Nixon budget for fiscal year 1970 reveals that not even a serious attempt to meet these needs will be made.

That budget shows that:

First, while $1 billion has been authorized to aid local units of government for pollution abatement, the administration has only budgeted $214 million.

Second, while $295 million was authorized for hospital construction and modernization, the administration budgeted only $153.9 million.

Third, while $3.6 billion has been authorized for ESEA programs, the administration has budgeted only $1.4 billion.

Any thoughtful person would expect that with the further imposition of the surtax, the Federal Government would at least begin to close the cavernous gap between its promises and performance, its obligations and its actions. Tragically, the budget shows it has no such intention.

This means purely and simply that we are spending our money in the wrong places.

It means that our spending priorities are not in order.

It means that even with a continuation of the 10-percent surtax we will not have the money to meet the needs of a modern society.

It means that we will merely be adding additional millions to our present misallocation of fiscal resources.

We cannot afford that.

That is why, given the lack of determination on the part of both this administration and this Congress to rearrange our priorities, and put first things first, I will not—unless circumstances change—vote for an extension of the surtax.

CONGRESSMAN BOB ECKHARDT STATES HIS POSITION ON THE 10-PERCENT INCOME TAX SURCHARGE

(Mr. ECKHARDT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ECKHARDT. Mr. Speaker, at this time we find ourselves constantly besieged with dramatic statements from the White House and Treasury telling of the dire consequences of a failure to pass legislation extending the 10-percent income tax surcharge before the end of this month. There seems to be almost a sense of panic over this; we are said to face anything from a case of German-type hyperinflation to a stock-market-crash depression. I am not going to be panicked into choosing a Nixon-type compromise: give a sop to the poor, continue tax dodges for the rich, and stick the middleman. There is a logical and practical alternative, one that will keep the pressure on the administration for tax reform. It would preserve and continue the economic restraining effects of the surcharge while allowing time for further consideration of its need.

While I do not fully agree with some of my colleagues that no action whatsoever should be taken on the surcharge until a tax reform bill is presented, I do believe that we need to serve notice on

the President that he will not have his way on this tax legislation without some firm, concrete action on tax reform.

What I am proposing is that Congress pass legislation extending the present withholding rate, which includes the 10-percent additional tax, without actually extending the surtax itself. The benefits of this action are many:

First. We would be able to avoid legislating on such an important matter under the pressure of a deadline.

Second. Many economists are convinced that we will be in the throes of a dangerous economic slowdown in the first quarter of 1970. If the Congress took no action other than to extend the withholding rate, the economy would be blessed by a great influx of spending money to the public at the time of its greatest need; that is, at tax refund time. If inflation is controlled or reversed, Congress would simply pass legislation lowering the withholding rate to its normal level.

Third. The Congress, without engaging in a blind guess, would then be able to decide if the surtax was or was not needed. Congress is pretty good at "hindsight," and it could use it. If the inflation continued unabated the surtax could be enacted retroactively while none of the necessary economic effects would be lost in the interim. Retroactivity would not hurt the taxpayer because he would have paid his taxes by the previous withholding.

Fourth. Tax reform minded Representatives will have the leverage that they have so long sought in this area. We will be able to put the heat on the President to push for tax reform without risking the soundness of the economy by a too early relatxation of fiscal restraint.

Fifth. Also, Congress would retain a real budget control. We could be satisfied that the cuts that are made by the administrative forces are not made in the programs most vital to cities and to the poor. Likewise, that some reductions are made in areas of extravagance like some military boondoggles. With the surtax question impending after the budget cuts, Congress would have potent bargaining strength.

But if we are to reduce exorbitant interest rates, we must take other restraining action. Repeal, flatly, the 7-percent investment credit with no loopholes for those interests who loudly protest.

The actual tax take would be a little less under my plan than in the case of an immediate extension of the surtax. This is because so many people are not subject to withholding and also because people might react to this action by increasing their spending in expectation of a large tax refund.

To counter these possibilities, I would favor an excess profits tax similar to those established during the Second World War and the Korean war. It is unfair for most to suffer increased wartime burdens while others enjoy increased wartime profits. I fully concur with the efforts of Senator McGOVERN in this area.

I think this program is reasonable and fair. I am open minded about alteration in procedure, but I shall not vote for a tax before assurances are made that the big squeeze will not continue to be on the middle-income taxpayer while the great benefits go to the war contractor, and inflation and military expenditures steal the chicken from the poor man's pot.

ONE-BANK HOLDING COMPANY ACT

(Mr. MOORHEAD asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. MOORHEAD. Mr. Speaker, yesterday the Committee on Banking and Currency began executive sessions on the pending one-bank holding company legislation. I offered a substitute, and in view of the fact that a motion to table this substitute was defeated by a vote of 15 yeas and 20 noes, it would appear that this substitute may be the vehicle for marking up the one-bank holding company legislation.

In order that other Members and the public may have an opportunity to study this substitute, I include the substitute at this point in the RECORD:

SUBSTITUTE OFFERED BY MR. MOORHEAD

§ 1. Amendments to the Bank Holding Company Act

(a) Section references in this section refer to the sections of Public Law 511, 84th Congress, as amended.

(b) The first section is amended by striking "of 1956".

(c) Section 2(a) is amended to read:

"SEC. 2. (a) (1) Except as provided in paragraph (2) of this subsection, 'bank holding company' means any company that has control over any bank or over any company that is or becomes a bank holding company by virtue of this Act.

"(2) No company is a bank holding company by virtue of

"(A) its ownership or control of shares acquired by it in connection with its underwriting of securities if the shares are held only for such period of time as will permit the sale thereof on a reasonable basis.

"(B) its control of voting rights of shares acquired in the course of a proxy solicitation if the company was formed for the sole purpose of participating in that solicitation.

"(C) its ownership or control of shares acquired in securing or collecting a debt previously contracted in good faith, until two years after the date of acquisition.

"(D) its ownership or control of shares acquired by it of any State chartered bank or trust company which is wholly owned by thrift institutions and which restricts itself to the acceptance of deposits from thrift institutions, deposits arising out of the corporate business of its owners, and deposits of public moneys."

"(3) For the purposes of this Act, any successor to a bank holding company shall be deemed to be a bank holding company from the date on which the predecessor company became a bank holding company."

(d) Section 2(b) is amended (1) by inserting "limited partnership in which the value of the interests of the general partners is less than 25 percent of the value of the interests of all of the partners," immediately after "means any corporation," and (2) by inserting "in which the value of the interests of the general partners is 25 percent or more of the value of the interests of all of the partners" immediately after "any partnership".

(e) Section 2(d) is amended to read:

"(d) (1) Any given company is a subsidiary of any person having control over it.

"(2) Any given person has control

"(A) over any company which is a corporation if the person directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, has power to vote 25 percent or more of any class of voting securities of that corporation.

"(B) over any company which is a corporation or trust if the person controls in any manner the election of a majority of its directors or trustees.

"(C) over any company if the Board determines, after notice and opportunity for hearing, that the person directly or indirectly exercises a controlling influence over the management or policies of that company.

"(3) For the purposes of any proceeding under paragraph (2)(C) of this subsection, there is a presumption that any person who directly and indirectly holds with power to vote less than 5 percent of any class of voting securities of a given corporation does not have control of that corporation.

"(4) In any administrative or judicial proceeding under this Act, other than a proceeding under paragraph (2)(C) of this subsection, a person may not be held to have had control of any given corporation at any given time unless that person, at the time in question, directly and indirectly held with power to vote 5 percent or more of any class of voting securities of the corporation, or had already been found to have control in a proceeding under paragraph (2)(C)."

(f) Section 2 is amended by adding at the end thereof the following:

"(i) The term 'person' includes natural persons, companies, and all other entities cognizable as legal personalities.

"(j) The term 'thrift institution' means (1) a domestic building and loan or savings and loan association, (2) a cooperative bank without capital stock organized and operated for mutual purposes and without profit, or (3) a mutual savings bank not having capital stock represented by shares.

"(k) The term 'antitrust laws' means the Act of July 2, 1890 (the Sherman Antitrust Act, 15 U.S.C. 1–7), the Act of October 15, 1914 (the Clayton Act, 15 U.S.C. 12–27), and any other Acts in pari materia.

"(m) Neither this Act nor any regulation or order under this Act may be raised as a defense in any action under the antitrust laws, except that no criminal action may be brought under the antitrust laws based solely on an activity which the defendant was at the time specifically authorized to perform by an order of the Board, nor may damages be awarded in any civil action under antitrust laws based solely on such an activity."

(g) Section 3(a) is amended to read:

"SEC. 3. (a) (1) Except as provided in paragraph (2) of this subsection, without the prior approval of the Board under this section,

"(A) no action may be taken that causes any company to become a bank holding company.

"(B) no action may be taken that causes a bank to become a subsidiary of a bank holding company.

"(C) no bank holding company may acquire direct or indirect ownership or control of any voting shares of any bank if, after the acquisition, the holding company will directly or indirectly own or control more than 5 percent of the voting shares of the bank.

"(D) no bank holding company or subsidiary thereof, other than a bank, may acquire all or substantially all of the assets of a bank.

"(E) no bank holding company may merge or consolidate with any other bank holding company.

"(2) The prohibitions of paragraph (1) of this subsection do not apply to

"(A) the acquisition of shares by a bank in good faith in a fiduciary capacity, if the

shares (including any stock dividends or securities subsequently acquired by virtue of, in exchange for, or in the exercise of preemptive rights or privileges of, the shares originally acquired) are acquired in kind as part of the corpus of an estate or trust (other than a company as defined in section 2(b)) which is committed to the bank for administration, and the bank owns no shares of the same company which it has purchased (other than in the exercise of preemptive rights or privileges) for its own account or with funds under its control in any capacity.

"(B) shares acquired by a bank in the regular course of securing or collecting a debt previously contracted in good faith and which are disposed of within a period of two years after acquisition.

"(C) additional shares acquired by a bank holding company in a bank in which the bank holding company owned or controlled a majority of the voting shares prior to the acquisition."

(h) Section 3(d) is amended by changing "the effective date of this amendment" to read "July 1, 1966,".

(i) Section 3 is amended by adding the following new subsections at the end thereof:

"(e) The Board shall immediately notify the Attorney General of any approval by it of any proposed acquisition, merger, consolidation, or other transaction required to be approved under this section (referred to in this section as a 'bank acquisition'). If the Board finds that it must act immediately to prevent probable failure of a bank, a bank acquisition may be consummated immediately upon approval. In all other cases, a bank acquisition may not be consummated before the thirtieth calendar day after the date of approval by the Board. No action under the antitrust laws arising out of a bank acquisition may be brought after the expiration of this thirty-day period. The commencement of such an action shall stay the effectiveness of the Board's approval unless the court otherwise specifically orders. In any such action, the court shall review de novo the issues presented. In any judicial proceeding attacking any bank acquisition approved pursuant to this Act on the ground that the transaction alone and of itself constituted a violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2), the standards applied by the court shall be identical with those that the Board is directed to apply under this section. Upon the consummation of a bank acquisition in compliance with this section and after the termination of any antitrust litigation commenced within the period prescribed in this subsection, or upon the termination of that period if no such litigation is commenced therein, the transaction may not thereafter be attacked in any judicial proceeding on the ground that it alone and of itself constituted a violation of any antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2), but nothing in this section exempts any bank holding company involved in such a transaction from complying with the antitrust laws after the consummation of the transaction.

"(f) If any action brought under the antitrust laws arising out of any bank acquisition approved by the Board, the Board and any State banking supervisory agency having jurisdiction within the State involved may appear as a party of its own motion and as of right, and be represented by its counsel.

"(g) Any bank acquisition as to which no litigation was initiated by the Attorney General prior to July 1, 1966, shall be conclusively presumed not to have been in violation of the antitrust laws other than section 2 of the Act of July 2, 1890 (section 2 of the Sherman Antitrust Act, 15 U.S.C. 2).

"(h) Any court having pending before it after June 30, 1966, any litigation initiated under the antitrust laws by the Attorney General with respect to any bank acquisition shall apply the substantive law set forth in this section."

(j) Section 4(a)(1) is amended by striking "after the date of enactment of this Act".

(k) Section 4(b) is amended by changing "After two years from the date of enactment of this Act, no" to read "No".

(m) Section 4(c)(5) is amended to read:

"(5) shares acquired and held in the manner, kinds, and amounts specifically permissible for national banks under Federal statute law and regulations issued pursuant thereto;"

(n) Section 4(c)(8) is amended to read:

"(8) shares of any company all the activities of which are or after its acquisition are to be authorized under subsection (e) or (f) of this section;"

(o) Section 4(c)(9) is amended to read:

"(9) shares lawfully acquired and owned on December 31, 1968, in any company organized under the laws of a foreign country and which is principally engaged in banking or other financial operations outside the United States;"

"(p) Section 4 is amended by adding at the end thereof the following new subsections:

"(e) Except for functions performed by a bank holding company which is a bank, or by subsidiaries whose shares are held under section 3 or under one of the other subsections of this section, and except for functions authorized under subsection (f) of this section, a bank holding company and its subsidiaries may perform no functions other than those set forth in the following numbered paragraphs of this subsection. The enumeration of these functions does not enlarge the powers which any bank holding company or subsidiary would otherwise possess under the laws under which it is organized, incorporated, or created, and their exercise is subject to such restrictions and requirements as the Board may by regulation or order prescribe to prevent undue concentrations of resources, decreased competition, conflicts of interest, or unsound banking practices.

"(1) Acting as principal or as agent to make, buy, sell, endorse, or otherwise deal with secured and unsecured personal and business loans, including mortgage loans.

"(2) Leasing property under any arrangement whereby the lessee is

"(A) obligated to pay over the term of the lease an amount equal to the entire cost of the property plus a finance charge, and

"(B) entitled to ownership of the property at the end of the term of the lease either for a nominal consideration or for no consideration.

"(3) Acting as investment adviser, subject to the prohibitions of subsection (g).

"(4) Performing bookkeeping and other data-processing services utilizing equipment acquired primarily for the purpose of servicing the bank holding company or its subsidiaries, but nothing in this Act authorizes the performance of auditing or other professional functions in the field of accounting.

"(5) Extending and collecting business and personal credit originated through the use of credit cards or other lawful means of identification or control of accounts.

"(6) Acting as trustee, executor, administrator, guardian, or in other personal fiduciary capacities.

"(7) Acting as trustee, registrar, transfer agent, paying agent, or in other business and corporate fiduciary capacities.

"(8) Providing, either as principal or as agent, insurance which

"(A) insures the life of a debtor pursuant to or in connection with a specific credit transaction, or

"(B) provides indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is disabled.

"(9) Making equity investment in community rehabilitation and development corporations organized and operating principally for one or more of the following purposes:

"(A) providing better housing and employment opportunities for persons of low and moderate income.

"(B) assisting persons of low and moderate income to acquire and develop business enterprises.

"(C) participating in urban renewal projects.

"(f)(1) A bank holding company or its subsidiary may carry on any activity of a financial or fiduciary nature if the Board finds, on the record after opportunity for hearing, that the carrying on of the activity in question by the applicant (in the case of an order authorizing the activity on the part of a particular company) or by bank holding companies or their subsidiaries generally (in the case of a regulation authorizing the activity on the part of all companies similarly situated), under the limitations and conditions set forth in the order or regulation,

"(A) would not result in a violation of the antitrust laws;

"(B) is closely related to the business of banking or of managing or controlling banks; and

"(C) is in the public interest when carried on by a bank holding company or its subsidiaries.

"(2) In the event of the failure of the Board to act on any application for an order under this subsection within the ninety-one day period which begins on the date of submission to the Board of the complete record on that application, the application shall be deemed to have been granted.

"(3) Whenever the Board finds that the conduct of any given activity by a bank holding company or subsidiary would be in the public interest but cannot be authorized under the terms of this Act, the Board shall forthwith transmit its finding to the Congress, together with such recommendations for legislative action as it deems appropriate to the circumstances.

"(g)(1) Except as provided in paragraph (2) of this subsection, for the purpose of any provision of Federal law the following activities are neither necessary, incidental, nor related to carrying on the business of banking or of managing or controlling banks, and are not in the public interest to be carried on by banks or bank holding companies or subsidiaries thereof:

"(A) Engaging in the issue, flotation, underwriting, public sale, or distribution, at wholesale or retail, or through syndicate participation, of stocks, bonds, or other similar securities, or of interests in any such securities, whether or not any such interests are redeemable and whether or not the securities to which any such interests relate are in a fund or account or are subject to discretionary sale or purchase.

"(B) Acting as an investment manager or investment adviser of or for any person engaged in any activity described in subparagraph (A) of this paragraph.

"(2) The prohibitions of paragraph (1) of this subsection do not apply to

"(A) the issuance by any bank of certificates of deposit, passbooks, acceptances, checks, or other evidences of banking liabilities.

"(B) the issuance by any bank holding company or subsidiary thereof of stock, bonds, notes, or other evidences of capital loaned to or invested in the company or subsidiary itself and not in any fund or account for reinvestment.

"(C) dealing in and underwriting securities which are by the terms of paragraph 'Seventh' of section 5136 of the Revised Statutes exempted from the limitations and restrictions contained in that paragraph as to dealing in and underwriting investment securities.

"(h) Under such conditions as the Board may by regulation prescribe to prevent abuse of the administrative process, application to the Board for modification of any order issued under subsection (e) or (f) of this section may be made by any person who

would be a proper party to a proceeding, at the time of the application, to issue the order in question de novo.

"(i) Any person may sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by reason of the performance by a bank holding company or subsidiary thereof of any activity not permitted under this section, or performed under an order or regulation of the Board beyond the scope of the Board's authority, under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings. Upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue."

(q) Section 5(b) is amended by adding at the end thereof the following new sentence: "In any proceeding for the issuance of a regulation or order under section 4, the Board shall invite the views of the Attorney General as to the competitive factors involved, and the views of the Comptroller of the Currency and the Federal Deposit Insurance Corporation as to all factors specifically made relevant in section 4 to the proceeding in question."

(r) Section 11 is repealed.

§ 2. Amendments to Federal Deposit Insurance Act

(a) In this section, section references are to the Federal Deposit Insurance Act unless otherwise specified. So much of section 18 (c)(1) (12 U.S.C. 1828(c)(1)) as precedes subparagraph (A) thereof is amended to read:

"(c)(1) Except with the prior written approval of the responsible agency, which shall be the Board of Governors of the Federal Reserve System in the case of any insured bank which is a bank holding company or a subsidiary of a bank holding company, and which shall be the Corporation in the case of any other insured bank, an insured bank may not".

(b) Section 18(c)(2) is amended by inserting "shall be the Board of Governors of the Federal Reserve System if the acquiring, assuming, or resulting bank is a bank holding company or a subsidiary of a bank holding company and otherwise" immediately after "the responsible agency, which".

(c) Section 18(i)(1) is amended to read:

"(i)(1) An insured State nonmember bank may not reduce the amount or retire any part of its common or preferred capital stock, or retire any part of its capital notes or debentures, without the prior consent of

"(A) the Board of Governors of the Federal Reserve System if it is a bank holding company or a subsidiary of a bank holding company.

"(B) the Controller of the Currency if it is a District bank not described in subparagraph (A).

"(C) the Corporation if it is not a bank described in subparagraph (A) or (B)."

(d) Section 18(i)(2) is amended (1) by changing "No" to read "An", (2) by changing "shall" to read "may not", and (3) by inserting "without prior written consent of the Board of Governors of the Federal Reserve System if it is a bank holding company or a subsidiary of a bank holding company, and otherwise" immediately after "approving such conversion,".

(e) Section 3 (12 U.S.C. 1813) is amended by adding the following new subsection at the end:

"(r) The term 'bank holding company', and the term 'subsidiary' with reference to a subsidiary of a bank holding company, have the same meanings as in the Bank Holding Company Act of 1956."

(f) Sections 21 and 22 (12 U.S.C. 1830, 1831) are redesignated as sections 24 and 25, and the following new sections are inserted immediately after section 20:

"SEC. 21. (a) Any insured bank which holds any securities in a fiduciary capacity at the end of any calendar quarter shall, not later than thirty days thereafter, file a statement with the Securities and Exchange Commission setting forth the descriptions and amounts of the securities so held.

"(b) Statements filed pursuant to this section need not disclose the number of beneficiaries for which the bank is acting, or any information about the fiduciary relationships or the beneficiaries thereof, but shall otherwise be in conformity with such regulations as the Securities and Exchange Commission may prescribe.

"(c) For the purposes of this section, the term 'securities' has the same meaning as in the Securities Act of 1933.

"SEC. 22. (a)(1) The prohibitions of this subsection apply to any transaction—

"(A) whose effect may be to substantially lessen competition or tend to create a monopoly in any type of credit or property transactions or in any type of services, and

"(B) which is engaged in by an insured bank, a bank holding company, or any subsidiary of a bank holding company, all of which are referred to hereinafter in this subsection as institutions.

"(2) An institution to whose transactions the prohibitions of this subsection apply may not in any manner extend credit, lease or sell property of any kind, or furnish any service, or fix or vary the consideration for any of the foregoing, on the condition, agreement, or understanding

"(A) that the customer shall obtain some other credit, property, or service from the institution itself or, if the institution is a bank holding company or subsidiary of a bank holding company, from either that company or any subsidiary of that company; or

"(B) that the customer shall not obtain credit, property, or services from a competitor of the institution itself or, if the institution is a bank holding company or a subsidiary of a bank holding company, from a competitor of either that company or any subsidiary of that company.

"(b) The district courts of the United States have jurisdiction to prevent and restrain violations of subsection (a) of this section. It is the duty of the United States attorneys, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. The proceedings may be by way of a petition setting forth the case and praying that the violation be enjoined or otherwise prohibited. When the parties complained of have been duly notified of the petition, the court shall proceed, as soon as may be, to the hearing and determination of the case. While the petition is pending, and before final decree, the court may at any time make such temporary restraining order or prohibition as it deems just in the premises. Whenever it appears to the court that the ends of justice require that other parties be brought before it, the court may cause them to be summoned whether they reside in the district in which the court is held or not, and subpenas to that end may be served in any district by the marshal thereof.

"(c) In any action, civil or criminal, brought by or on behalf of the United States under subsection (a) of this section, subpenas for witnesses may run into any district, but in civil actions no writ of subpena may issue for witnesses living out of the district in which the court is held at a greater distance than one hundred miles from the place of holding the same without the permission of the trial court being first had upon proper application and cause shown.

"(d) Any person who is injured in his business or property by reason of anything forbidden in subsection (a) of this section may sue therefor in any district court of the United States in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

"(e) Any person, firm, corporation, or association may sue for and have injunctive relief, in any court of the United States having jurisdiction over the parties, against threatened loss or damage by a violation of subsection (a) of this section, under the same conditions and principles as injunctive relief against threatened conduct that will cause loss or damage is granted by courts of equity, under the rules governing such proceedings. Upon the execution of proper bond against damages for an injunction improvidently granted and a showing that the danger of irreparable loss or damage is immediate, a preliminary injunction may issue."

(g) The following section is inserted immediately before section 24:

"SEC. 23. (a) Except as provided in subsection (b) of this section, a person who is a director, trustee, officer, or employee of an insured bank may not at the same time be a director, officer, or employee of

"(1) any other insured bank.

"(2) any other company which is a bank holding company or a subsidiary of a bank holding company.

"(3) any insured institution as defined in section 401 of the National Housing Act.

"(4) any insurance company.

"(5) any broker or dealer registered under the Securities Exchange Act of 1934, or be a proprietor or general partner of any such broker or dealer.

"(b) Subsection (a) of this section does not prohibit

"(1) the holding by any individual of any number of positions as director, trustee, officer, or employee of any number of companies within any given group of companies if one of the companies in the group is a bank holding company and all of the rest of them are subsidiaries of that holding company.

"(2) service by any individual in any office or position with any life insurance or annuity company organized and operated without profit to any private shareholder or individual exclusively for the purpose of issuing insurance or annuity contracts to or for the benefit of individuals engaged in the service of educational institutions.

"(3) service by any individual who is a director, trustee, officer, or employee of a thrift institution in any office or position in

"(A) any insurance company the capital stock of which may not by law be owned by any person other than a thrift institution.

"(B) any corporation or association without capital stock organized before September 1, 1957, and operated for mutual purposes and without profit for the purpose of providing reserve funds for, and insurance of shares or deposits in, thrift institutions.

"(C) any corporation or association organized before September 1, 1957, and operated for mutual purposes and without profit for the purpose of providing reserve funds for thrift institutions, but only if 85 percent or more of its income is attributable to providing such reserve funds and to investments.

"(D) any State chartered bank or trust company which is wholly owned by thrift institutions and which restricts itself to the acceptance of deposits from thrift institutions, deposits arising out of the corporate business of those institutions, and deposits of public moneys."

§ 3. Amendment to National Housing Act

Title IV of the National Housing Act is amended by adding at the end thereof the following new section:

"SEC. 411. (a) Except as provided in subsection (b) of this section, a person who is a director, trustee, officer, or employee of

an insured institution may not at the same time be a director, officer, or employee of

"(1) any other insured institution.

"(2) any other company which is a savings and loan holding company or a subsidiary of a savings and loan holding company.

"(3) any insured bank as defined in section 3 of the Federal Deposit Insurance Act.

"(4) any insurance company except an insurance company the capital stock of which by law may not be owned by any person other than a mutual savings bank.

"(5) any broker or dealer registered under the Securities Exchange Act of 1934 or be a principal or a general partner of any such broker or dealer.

"(b) Subsection (a) of this section does not prohibit

"(1) the holding by any individual of any number of positions as director, trustee, officer, or employee of any number of companies within any given group of companies if one of the companies in the group is a savings and loan holding company as defined in section 408 of this title and all the rest of them are subsidiaries of that holding company.

"(2) service by any individual in any office or position with any life insurance or annuity company organized and operated without profit to any private shareholder or individual exclusively for the purpose of issuing insurance or annuity contracts to or for the benefit of individuals engaged in the service of educational institutions.

"(3) service by any individual who is a director, trustee, officer, or employee of a thrift institution in any office or position in

"(A) any insurance company the capital stock of which may not by law be owned by any person other than a thrift institution.

"(B) any corporation or association without capital stock organized before September 1, 1957, and operated for mutual purposes and without profit for the purpose of providing reserve funds for, and insurance of shares or deposits in, thrift institutions.

"(C) any corporation or association organized before September 1, 1957, and operated for mutual purposes and without profit for the purpose of providing reserve funds for thrift institutions, but only if 85 percent or more of its income is attributable to providing such reserve funds and to investments.

"(D) any State chartered bank or trust company which is wholly owned by thrift institutions and which restricts itself to the acceptance of deposits from thrift institutions, deposits arising out of the corporate business of those institutions, and deposits of public moneys."

§ 4. Mutual savings banks

(a) Except as provided in subsection (b) of this section, a person who is a trustee, director, officer, or employee of a mutual savings bank other than an insured bank may not at the same time be a director, trustee, officer, or employee of

(1) any other mutual savings bank which is not an insured bank.

(2) any insured bank as defined in section 3 of the Federal Deposit Insurance Act.

(3) any insured institution as defined in section 401 of the National Housing Act.

(4) any company which is a bank holding company as defined in the Bank Holding Company Act of 1956 or a savings and loan holding company as defined in section 408 of the National Housing Act.

(5) any insurance company except an insurance company the capital stock of which by law may not be owned by any person other than a mutual savings bank.

(6) any broker or dealer registered under the Securities Exchange Act of 1934, or be a principal or a general partner of any such broker or dealer.

(b) Subsection (a) of this section does not prohibit

(1) the holding by any individual of any number of positions as director, trustee, officer, or employee of any number of companies within any given group of companies if one of the companies in the group is either a bank holding company as defined in the Bank Holding Company Act or a savings and loan holding company as defined in section 408 of the National Housing Act and all the rest of them are subsidiaries of that holding company.

(2) service by any individual in any office or position with any life insurance or annuity company organized and operated without profit to any private shareholder or individual exclusively for the purpose of issuing insurance or annuity contracts to or for the benefit of individuals engaged in the service of educational institutions.

(3) service by any individual who is a director, trustee, officer, or employee of a thrift institution in any office or position in

(A) any insurance company the capital stock of which may not by law be owned by any person other than a thrift institution.

(B) any corporation or association without capital stock organized before September 1, 1957, and operated for mutual purposes and without profit for the purpose of providing reserve funds for, and insurance of shares or deposits in, thrift institutions.

(C) any corporation or association organized before September 1, 1957, and operated for mutual purposes and without profit for the purpose of providing reserve funds for thrift institutions, but only if 85 percent or more of its income is attributable to providing such reserve funds and to investments.

(D) any State chartered bank or trust company which is wholly owned by thrift institutions and which restricts itself to the acceptance of deposits from thrift institutions, deposits arising out of the corporate business of those institutions, and deposits of public moneys.

§ 5. Effective dates

(a) Except as otherwise specified in this section, the provisions of this Act become effective upon enactment.

(b) Section 4 and the amendments made by sections 2(g) and 3 become effective on the first day of the third calendar year which begins after the date of enactment.

AMERICAN GI'S CALL TROOP WITHDRAWAL A HOAX

(Mr. PUCINSKI asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PUCINSKI. Mr. Speaker, I was very disturbed to read an Associated Press dispatch from Dong Tam, South Vietnam, which said that the first American infantry battalion scheduled to be withdrawn from Vietnam is going home in name only and the men are angry and bitter.

The AP quoted one first lieutenant as saying they are kidding the public, telling folks the 3d Battalion is going home when in fact only the colors and standards are going home.

Under President Nixon's withdrawal order, the 3d Battalion, 60th Infantry, of the U.S. 9th Infantry Division is scheduled to fly to the United States July 8 for demobilization. But it will actually be a composite battalion of 900 men.

The Associated Press states that men with a few months to serve in Vietnam will be transferred to other units. Their places on the trip home will be filled by soldiers from other battalions who have completed or almost completed their 12-month tours.

The Associated Press quotes one soldier as saying:

We don't feel good about people going home with our patches on their uniforms.

Many of the men have already received letters from home and are angry that their families will be disappointed.

Mr. Speaker, this AP dispatch confirms what I said in Chicago last Sunday that widespread talk of troop withdrawals from Vietnam could be a cruel hoax on the American people because it obscures the fact that more than 548,000 American troops will be sent to Vietnam this year and that the 25,000 troops ordered withdrawn by President Nixon is only half of the additional 50,000 troops that were sent to Vietnam in 1968.

I said that the current debate between President Nixon and Senate leaders over long-range plans for an American troop pullout offers no comfort to the families of the 326,000 American boys who will be sent to Vietnam during the remainder of 1969, nor to the families of the 222,000 soldiers who have already been sent to Vietnam thus far this year.

Most Americans are not aware that under our rotation policy, the Pentagon must this year replace more than 548,000 American soldiers sent to Vietnam during 1968.

I am going to place in this RECORD at the conclusion of my remarks the table on rotation for this year and I do this to show how misleading are these very detailed reports about troop withdrawals.

It is quite obvious to me that talk about troop withdrawal only prolongs the war in Vietnam and obscures the fact that the United States will continue to suffer huge losses if a cease-fire or some other meaningful forward movement is not agreed to at the peace talks in Paris.

This huge shipment of American boys to Vietnam during 1969 really fortifies my demand that the administration give the Communists until noon, August 1 of this year to agree to a complete halt in hostilities.

If such a halt in this needless slaughter is not effectuated by noon, August 1, 1969, I believe the United States should serve notice on North Vietnam that we will resume the bombing and that we will take whatever other military steps are necessary to bring this war to a military conclusion.

The figures which I am placing in the RECORD today were compiled for me by the Defense Department and so far as I know we see here for the first time the replacement requirements of troops going to combat in Vietnam.

I am not all persuaded by the argument that other troops come home and this is merely a replacement for the boys coming home from Vietnam.

I have been told by responsible spokesmen in the highest places of our Government that a study now exists that shows some 200,000 American troops could be withdrawn from combat duty immediately and not be replaced if the United States resumed bombing Communist military supply routes in the North.

The bombing halt a year ago released 400,000 North Vietnam troops from home

guard duty. Of these, we know that 100,000 are now fighting our American troops in South Vietnam; another 100,000 have taken over the demilitarized zone and are now waging aggression and artillery attacks on American installations near the DMZ. Forty to fifty thousand North Vietnamese troops are stationed in the north end of Laos and the rest are in North Vietnam's major cities intensifying defenses in anticipation of a renewal of bombing of North Vietnam.

Those who argue against bombing of North Vietnam apparently are oblivious of the fact that Prince Souvanna Phouma, Prime Minister of Laos, recently persuaded the United States not to halt its bombing of North Vietnamese troops in north Laos.

Prince Phouma quite properly stated that a halt in American bombing of north Laos would give Hanoi's four Communist divisions in Laos a military advantage.

It is incredible to me that American bombers can continue to bomb Communist supply lines in Laos but are not permitted to bomb similar lines in North Vietnam which provide ammunition for use against American soldiers.

There are those who continue to naively argue that the bombing pause is causing some sort of morale problem in North Vietnam because since the destruction ended the North Vietnamese are very difficult to discipline. This is about the silliest argument I have ever heard and I am grateful for dispatches from the Washington Star foreign service which clearly indicate that the bombing halt is proving advantageous to North Vietnam.

Our own soldiers in South Vietnam reflect the disgust with the bombing pause. Time magazine on June 20 quoted an Army specialist fourth class who said: "I think our biggest mistake was stopping the bombing of the North."

Mr. Speaker, I am sure that every American wants to end this war as quickly as possible. But the fruitless negotiations in Paris, with no end in sight to hostilities, forces us to conclude that on the basis of present American losses, the number of American soldiers killed in action since the bombing pause started will soon exceed our total losses since we first became involved in Vietnam in 1961.

I am herewith placing in the RECORD the monthly replacement necessary to maintain the present operational levels in Vietnam. Let there be no mistake. Those who talk about withdrawal of troops obscure the reality of the following replacement timetable as prepared by the Department of Defense.

The table follows:

For 1969	
January	51,900
February	48,400
March	42,000
April	41,000
May	39,300
June	43,600
July	49,400
August	41,300
September	82,100
October	48,300
November	39,900
December	46,700
Total	573,900
Less	25,000
Total	548,900

EQUITABLE TAX REFORM SHOULD MAKE UNNECESSARY ANY EXTENSION OF THE SURTAX

(Mr. FEIGHAN asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. FEIGHAN. Mr. Speaker, it is incumbent upon Members of Congress to provide an equitable tax system for all Americans. Former Secretary of the Treasury, Joseph W. Barr, discussed the possibility of a "taxpayer revolt if we do not soon make some major reforms in our income tax." The possibility of such a revolt is not remote when we consider the causes of this malcontent. The 1967 Internal Revenue statistics were astounding in their revelation that 155 Americans with earnings over $200,000 paid no taxes and even more deplorable, 21 of these individuals earned more than $1,000,000 and escaped without returning any money to Washington. Certainly, such loopholes in our tax system are unfair.

The tax loopholes force good, decent, hard-working people to bear a larger burden of taxation than is necessary. The Federal tax problem is also compounded by a tremendous volume of State and local taxes which all citizens must pay. There is no question of the undue hardship imposed on many middle-class families by the Federal tax bite and the economic blow is equally severe on the poor.

In addition to plugging loopholes, there are other changes needed to provide equity in our tax program. Primary consideration should be given to an increase in the personal tax exemption. The high cost of living and inflation has worked an extreme disadvantage on millions of average families. The Cleveland Press, one of Ohio's outstanding papers, earlier this year listed 20 sources of taxation for most Americans and disclosed that a man with a wife and two children earning $7,500 a year will pay $2,077.05 in taxes. With such a tax bite, the average man would have to work from January 1 until April 11 to pay all his taxes. These people need relief and they deserve it. They are interested in increasing individual tax exemptions, and I am trying to help them through my bill to raise exemption to $1,200.

With the present level of inflation and the spiraling cost of living, $600 is no longer a realistic exemption. No one can support any member of his family for this amount. In 1948, when the Congress raised the personal tax exemption from $500 to $600, the House Ways and Means Committee stated:

> There is no evidence that income, after taxes, although it has increased very considerably during the past two years, has not kept pace with the cost of living. This increase in the cost of living is the reason your Committee's bill provides a $100 per capita increase in exemptions from $500 to $600.

I think the same rationale can be used this year to enact an increase in the present $600 exemption.

Undoubtedly, every Member has received many letters protesting the extension of the 10-percent surtax. In addition to such letters, I have been presented with petitions signed by more than 24,000 persons urging an end to the surtax and an increase in the personal exemption. Signatures on these petitions were obtained by volunteer workers, going from house to house, without any remuneration. The circulators and signers are hardworking, sincere people who feel that the present taxes are extremely burdensome. The drive to collect these signatures was spearheaded by two energetic, efficient women, Mrs. Margaret Kulak and Mrs. Mary O'Malley, who labored tirelessly to organize this campaign.

It is my firm belief that, if adequate steps are taken to eliminate the inequities in our tax laws, there would be no need for a surtax extension after June 30. The surtax should be permitted to lapse. If the necessary steps are taken to provide the required revenues anticipated from the surtax by wiping off the books the outrageous benefits which have long sheltered the wealthy, there would be no need to extend the surtax beyond the June expiration date. An unfair additional tax, the surtax only compounds the problem by adding to the burdensome tax already shouldered by those who can ill afford it. A surtax cannot be assessed on those who have avoided paying any taxes.

Secretary of the Treasury David M. Kennedy and the Honorable Paul W. McCracken, Chairman of the President's Council of Economic Advisors, recently testified before the House Ways and Means Committee that a December 31, 1969, termination of the 10-percent surtax and a subsequent reduction of the surtax to 5 percent until June 30, 1970, would provide the administration with a $6.3 billion dollar surplus. I believe that we should have a comprehensive tax reform package presented to us before reenacting any surtax in order that we could more accurately assess the need for Federal income. The fact that the vote on the surtax has been postponed until July 7 does not alter my view on the need for tax reforms, reforms which are critically needed to increase Government revenues and eliminate rampant injustice in our tax system. It is my firm conviction that tax reform is desperately needed to avoid erosion of the fundamental public respect for the tax law. This respect is the very foundation of the tax system and its successful administration.

MOSS COMMENDS AGENCY HEAD FOR ORDER AGAINST OVERCLASSIFICATION

(Mr. MOSS asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. MOSS. Mr. Speaker, for many years now, I have fought a continuing battle against the overclassification of documents, files and records by Federal agencies. I have long felt that the American people were not getting all the information they need to understand and properly evaluate the decisions being made by our civilian and military leaders. Such information is absolutely essential to the success of our form of government.

Therefore, I find it refreshing indeed

to read an order recently issued by Dr. John A. Hannah, the new Administrator of the Agency for International Development. Dr. Hannah states categorically that the overclassification of documents hampers freedom of information. He has instructed AID employees to take a hard look at all documents to make certain they are not overclassified. I commend him for this action and I hope other agencies will follow suit.

The text of his order, which was issued on June 13, follows:

DEPARTMENT OF STATE, AGENCY FOR INTERNATIONAL DEVELOPMENT,
Washington, D.C.

To all AID employees:

Since assuming the duties of Administrator of A.I.D., I have observed indications of what appears to me to be overclassification of documents which have been generated by Agency officials in Washington, D.C., and overseas.

Overclassification hampers freedom of information, weakens the classification structure, overburdens storage facilities, delays the handling of documents, and may even defeat the purpose for which the documents were intended. Classified information should not be included in an otherwise unclassified document unless needed for substance and clarity. A common error which seems to be a principal factor in overclassification is the practice of assigning a classification to limt distribution. This is neither desirable nor effectve but most assuredly can be counterproductive. I strongly urge each official, in preparing an Agency paper, to take a hard look to determine whether, in fact, the document requires a classification and, if so, assure that the lowest proper classification is assigned to the material.

As you are aware, classified information does not have to remain classified. When material is assigned a classification it should also be assigned a group marking to effect its automatic downgrading or declassification when the material no longer requires its original degree of protection. I request, therefore, that each office keep its classified information under continuing survey, and downgrade or declassify such information, whenever possible, consistent with security regulations set forth in 5 FAM 900 (Manual Order 631.1).

JOHN A. HANNAH.

THE ATLANTIS PROJECT

(Mr. ROBERTS asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. ROBERTS. Mr. Speaker, now that man is well on the way to conquering space, the next area of operation is the sea.

The world's marine systems are concerned almost exclusively with operations on or near the surface of the sea. The world's navies operate to control the surface of the sea. Submarine warfare is directed toward surface craft, other submarines and land targets. Military submarines are restricted to depths not significantly greater than the continental shelves.

Our Navy has been concerned with the development of a deep water rescue and research vehicle. One of these vehicles was able to photograph the remains of the submarine *Scorpion*.

The Atlantis program, which has been conducted exclusively by industry in cooperation with the University of Miami, has done a tremendous amount of research on an undersea facility. Initially, Atlantis will be an undersea site for basic research, experimentation, development of design criteria, and evaluation of equipment designs. Atlantis is directed toward developing the technologies required for operations at great depths.

This program has a significant national defense potential, and I urge the Department of Defense and the Congress to fully examine the possibilities offered by the Atlantis program as an offensive and defensive weapon, as well as an opportunity to learn the mysteries of deep-sea submergence.

A summary of the Atlantis project follows:

THE ATLANTIS PROJECT—A NATIONAL OCEAN RESEARCH AND DEVELOPMENT PROGRAM

THE WORLD OCEAN

The ocean, which covers more than 70% of the earth's surface, is commonly owned by all the sovereign nations of the world. Individual persons do not own any part of this area.

The strategic and tactical importance of the sea has been demonstrated consistently since the days of the Greek and Persian wars.

During the 16th and 19th centuries the use of the sea resulted in the spread of Western culture and civilization to much of the world, and formed the basis for much of the international political-legal system that exists in the world today.

During the middle of the 19th century the discovery of offshore oil deposits stimulated national interest in the sea bed and subsoil of the continental shelf. The Truman Proclamation during 1945 claimed an area about three times the size of Texas, and the substance of the Truman Proclamation was incorporated into the Conventions at the U.N. Conference on Law of the Sea at Geneva during 1958.

TECHNOLOGY AND LAW OF THE SEA

Technology is rapidly developing which will allow mankind to occupy and control the bottom of the ocean in the same manner that he already enjoys on the surface of the land.

It is appropriate today to consider what this ability to occupy the ocean will mean, and to consider the extensions of present laws which hopefully will reduce conflicts. Political issues resulting from attempts to extend national sovereignty in the ocean require analysis as to who will lose and who will gain by such an extension. It is necessary to consider alternate situations and to devise systems which will work under these conditions.

The ability to identify available technological options will help to develop a capability to choose the optimum path, rather than to allow circumstances to dictate the choices.

The existing law of the sea was developed primarily for military, navigational, and fishing purposes—and deals with the surface of the sea and not what is beneath it. Existing and future technology will promote military uses of the sea, and will be in advance of many commercial applications. The same technology will be used for commercial purposes unless there is an economic restriction against its use.

Within the next ten years strategic and tactical locations may be established by nations within the ocean, and there may be a tendency to deny access to the ocean around these installations.

The Conventions on the High Seas and the Convention on the Continental Shelf were instances of timely extensions and resolutions on the effect of new technology. Since their enactment in 1958, there have been great strides made in underwater technology, and it is essential that the legal aspects of the problems be examined in order to develop reasonable approaches to the use of the balance of the seas before incompatible national problems arise.

TECHNOLOGY AND NATIONAL POLICY

Within the next decade considerable effort must be expanded to assess the military significance and economic importance of the continental shelf and the deep ocean. We will need to develop vehicles and installations which can give us the capability to prohibit any power unfriendly to us from controlling strategic and tactical locations in the ocean.

The technology of the sea will evolve from the technology normally associated with naval architecture and marine enginering, and in addition it will employ technologies of the type developed for space, for medicine, and for many of our defense programs.

The development of ocean capabilities may significantly alter the balance of national capabilities in the world. The United States is in a unique position because of our extensive aerospace industry, defense industry, advanced capabilities in medicine, and the offshore oil industry. The spectrum of technology, if properly employed, will insure that this nation has the capability to explore and develop the resources of the ocean for the benefits of mankind.

A NATIONAL OCEAN TEST FACILITY REQUIREMENT

In "Effective Use of the Sea", a report of the Panel on Oceanography, of the President's Science Advisory Committee, June 1968, a recommendation was made that a responsible program be initiated for the development of undersea technology and provision for national ocean test facilities.

In the Report of the President to Congress on Marine Resources and Engineering Development, "Marine Science and Activities—A Year of Plans and Progress, March 1968", it was stated that an objective should be to accelerate the development of resources of the marine environment, extend human knowledge of the marine environment, encourage private investment enterprises in exploration, technological development, marine commerce, and economic use of the resources of the marine environment. The Report recommended that these activities be accomplished with close cooperation among all interested agencies, public and private. Special emphasis should be placed upon "Intensifying work in Deep Ocean Technology—to provide a reservoir of advanced engineering knowledge upon which the Navy can draw to meet requirements of future military systems. The same reservoir of technology may contribute to industrial engineering activity and development of deep sea resources."

The Report goes on to say, "The universities and private research laboratories are key sources of basic knowledge and manpower needed by our participants. The full development of this nation's ocean enterprise involves comparative activity by industry, regional authorities, state and local governments, and the academic community."

The Ocean Engineering Program of the U.S. Navy, published by the Oceanographer of the Navy during September 1967, says that the Navy has accepted the responsibility to help develop the undersea technology needed for effective use of the sea in the military, economic, social and political sense. "This must be a cooperative venture—a science—industry—Navy team." The Report goes on to say, "The focal project established for the deep ocean technology program is an experimental man-in-the-sea floor base. The technology developed to establish a manner one-atmosphere sea floor laboratory will provide options for improving man's use of the seashore by projecting commercial marine facilities seaward from urban areas." The Report concludes, "The spin-off value of the national

oceanographic program of development . . . comes about through the interaction of scientists and engineers acting in the government—industry—academic milieu."

NATIONAL OCEAN GOALS AND OBJECTIVES

The Report of the Commission of Marine Science, Engineering and Resources, "Our Nation and the Sea," published in January 1969, indicates that the nation can achieve the capability to operate at the 2,000 foot depth within a relatively short time if basic research and development are accelerated. The Commission recommended that the United States fully utilize the continental shelf and slope to the 2,000 foot depth and establish as a goal the capability to explore the ocean to depths of 20,000 feet by 1980. The Commission also recommended a Continental Shelf Laboratories National Project, "to provide a national capability for research, development, and operations on the continental shelf. The National Project should be jointly planned and operated in consultation with industry and the scientific community."

ATLANTIS PROGRAM OBJECTIVES

The Atlantis Program is a joint University, industry, regional approach to design, fabricate, emplace, and operate this continental shelf test and evaluation facility.

Initially, Atlantis will be an undersea test and evaluation site for basic research, experimentation, development of design criteria, evalution of equipment designs, and for proving underwater operating procedures. Its evolution to become an operating center for larger and more complex installation is anticipated. It will provide an operating capability at continental shelf depths approaching the known limits for effective work of men in the sea. Developments will be directed toward eventual operations at greater depths wherein man-in-the-sea operations are supplemented by work performed by submersibles and remote operating equipment.

Atlantis is the prototype program for deploying a system of undersea stations, which in conjunction with other national defense systems, could provide the ability to control the sea down to extreme depths. Industrially, it is a research and development program for ocean resources development. Educationally, it will provide an experimental program, a laboratory and field training sites for the aggressive extension of the knowledge of the sea.

NATIONAL SECURITY REQUIREMENTS

The world's marine systems are concerned almost exclusively with operations on or near the surface of the sea. The world's navies operate to control the surface of the sea. Submarine warfare is directed against surface craft, other submarines, and land targets. Military submarines can dive to depths not significantly greater than those of the continental shelves.

The Navy is concerned with the development of an operating capability for accomplishing any mission which might require the exploration of the continental shelf. It is logical to extend this capability first from continental shelf depths of less than 1,000 feet to the 6,000 foot depth of selected ridges and sea mounts, next to the 12,000 foot depths of the ocean floor, and finally to the abyssal plains and trenches of the deepest ocean waters.

A significant national defense potential is the development of a prototype station of a system of anti-submarine warfare (ASW) stations deployed along the Mid-Atlantic Ridge and selected sea mounts in the Pacific Ocean. As ASW command and control centers, these stations could extend our anti-submarine defenses to a distance from our shores where submarine-launched missiles become an air defense problem.

The Atlantis program will provide for the development of improved ocean systems, including offensive and defensive weapons, identification and tracking of surface and undersea craft, secure underwater logistics systems, and some initial approaches to deep submergence weapons and vehicles.

INDUSTRIAL REQUIREMENTS

A continental shelf test and evaluation facility is required by industry to develop equipment and techniques for more efficient drilling, mining, fishing, mineral extraction, construction and salvage operations. The facility will support industry efforts by the development of undersea industrial complexes and operations.

Undersea construction is fundamental to any industrial activity in the ocean. Engineers will require the same type of knowledge relating to undersea construction as presently exists for land construction. Undersea construction will require the development of methods for determining soil compactibility, stability and erosion of large areas under the sea. Site survey techniques must be developed for more precise measurement and more effective presentation of data.

Offshore petroleum activities will include the completion of wells on the bottom and the development of high density petroleum complexes associated with the storage and transport of petroleum products.

EDUCATION AND RESEARCH

Education and research will include physical oceanography, geology, biology, and undersea training. As an educational and training activity, the Atlantis Program will provide an opportunity for faculty and student participation in basic and applied research projects, as well as a training facility for underwater laboratory management and operations. The laboratory will provide an opportunity for scientists and engineers to operate for long periods in a submerged station where marine life and its effect can be observed and measured in its environment for extended periods of time.

ATLANTIS PROGRAM DEVELOPMENT

The Atlantis Program objectives, systems advantages, and a systems description was developed by the Department of Ocean Engineering, Institute of Marine Sciences, University of Miami, and Chrysler Corporation's Space Systems Division. At the completion of Phase A in January 1968, a presentation was made to the office of the Oceanographer of the Navy, and Admiral O. D. Waters responded in a letter which said, "I consider you are undertaking a very worthwhile project with a tremendous potential value to industry, education, and the government. Your approach appears basically sound from the general information provided by your presentation, and you have already done a commendable job in achieving support and cooperation from industry, local government, and a multi-university effort."

Phase B, completed in December 1968, included analysis and optimization of several concepts and their sub-systems, preliminary design of the station, its installation, and the development of preliminary program definition.

A report and Atlantis Program Proposal was submitted in January 1969 as a result of this effort. The response from Vice Admiral J. D. Arnold, Vice Chief of Naval Material, said in part, "The potential value of your proposal is well recognized. Your University/industry team has already taken a major step towards providing the nation with a manned underwater laboratory; and this has gained special significance since the publication of the Report of the Commission on Marine Science, Engineering, and Resources, 11 January 1969, which established a National Project for a Continental Shelf Laboratory. With an input of cooperative Federal planning and operation, the Atlantis Program appears to meet all major requirements for becoming a National Continental Shelf Laboratory. In this regard, the Navy is forwarding the Atlantis Program Proposal to the Secretary of the Navy, suggesting that it be presented to the Marine Science Council as a possible candidate for the initial National Project for a Continental Shelf Laboratory, with separate funding as a national project."

Chrysler Corporation Space Systems Division led the industrial team responsible for the Phase B effort with over all responsibility for systems integration, main structure design, and configuration control.

Air Reduction Company, Inc. of Murray Hill, New Jersey, is responsible for the hyperbaric facility and related systems.

J. Ray McDermott, Inc. of New Orleans, La., is responsible for site preparation and installation and retrieval.

Minnesota Mining and Manufacturing Co. of St. Paul, Minn. is responsible for the main habitat manipulators and hydraulics.

Raytheon Company of Portsmouth, R.I., is responsible for electronic and communication systems.

Sanders Nuclear Corporation of Nashua, N.H., is responsible for power sources and consideration of a nuclear power system.

Ling-Temco-Vought Aerospace Corporation of Dallas, Texas, is responsible for systems reliability integration and operations and maintenance analysis.

General Precision Systems is responsible for development of a systems simulation concept.

Gulf Universities Research Corporation, a consortium of universities along the Gulf of Mexico, is responsible for providing support for experiment integration. This effort is concerned with identifying uses which will be made by governmental agencies, industry, and universities of Atlantis as a test and evaluation facility.

STATUS AND SUMMARY OF THE ATLANTIS PROGRAM

As of June 1969, the University-Industry Atlantis team has completed and published Volume IV of their program proposal—"Mission and Experiment Plan," which supplements the basic proposal and contains the mission and experiment plan for the first two-year operational deployment of the Atlantis undersea laboratory. It presents details of each experiment project, the utilization of laboratory systems, and outlines the administrative plan for managing the Atlantis experiment program.

The recommendation by Admiral Arnold has been submitted to the Vice President as Chairman of the Marine Council, by the Secretary of the Navy.

Widespread congressional support of the Atlantis Program has been indicated by numerous letters from Senators and Congressmen to the President's Science and Technology advisor and the Director of Defense, Research, and Engineering.

The Atlantis Program effort is intended to include more than the Navy requirement for national security systems development. It is intended to integrate total requirements for a national continental shelf test and evaluation facility which will be operated in the national interest.

A group of universities, industries, and the political and business leaders of a region have combined their resources and talents in the work accomplished to date.

Federal support for the Atlantis Program now is in the national interest, to maintain the momentum of the University-Industry team effort which has been demonstrated during the past eighteen months.

THE VOICE OF THE PEOPLE IS HEARD THROUGHOUT THE LAND

(Mr. RARICK asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. RARICK. Mr. Speaker, the announcement in Detroit that ultraliberal Mayor Jerome P. Cavanagh, who ap-

parently reads the newspapers, will not run for another term can but reflect the grassroots command from decent, hard-working, taxpaying Americans to have done with the foolishness from the left.

In the 1968 elections, the heir apparent of the administration was soundly repudiated at the polls. His platform could satisfy less than 40 percent of the voters, despite the free flow of tax money to the cities. In 1969 the voters of Los Angeles, Minneapolis, New York, and other cities have plainly spoken at the polls.

Since January, we have seen Abe Fortas, who was intended to become Chief Justice of the United States, resign from the bench in disgrace. We have seen Earl Warren retire, ending the sorry era of the "Warren Court" with the bitter whine that the low esteem in which the Court is held is due to the misconduct of Abe Fortas and William O. Douglas. And we now see William O. Douglas on the run, looking for a place to hide, fearing the further disclosures which will lead to his impeachment.

Mr. Speaker, last November the people elected a President who had compaigned on promises to change the direction of the preceding administration. The people were fed up with higher and higher taxes—coupled with no-tax privileges for such favored left-wing operations as the Ford Foundation. They were fed up with a program of mollycoddling criminals to the point where it is unsafe to be on the streets—even unsafe to remain in your own home at night. They were totally fed up with a no-win war, where our men die daily because their Government will not support them in combat—but continues to encourage trade with their enemy and those who supply their enemy with the munitions and implements of war.

The American people still await any significant action by the present administration to redeem the promises made in that campaign. They have seen no reduction in Federal spending which was supposed to be a condition of the 10-percent Johnson surtax. Now the Johnson surtax is about to become the Nixon surtax.

The anti-inflation theory behind this tax on a tax is patently assinine, and the people know it. You simply cannot tell people that if they spend the dollar which they have earned, it will lead to inflation, but if the Government takes it away from them and spends it, some alchemy takes place so that the spending does not become inflationary.

Mr. Nixon must learn from Mr. Lincoln, who had something to say about fooling all of the people all of the time.

Mr. Speaker, there are not enough votes in this House to pass an extension of the surtax at this time. The Members have been hearing from their constituents. Everyone knows that the delay in acting on the measure is for the purpose of permitting time for arm-twisting in the name of party loyalty.

It is appropriate to again point out that people discipline political parties—and politicians—at the polls. We all should read our mail, and perhaps try to evaluate the news as did the Mayor of Detroit. I ask that clippings and a typical letter from one of my constituents in Amite, La., follow.

The clippings follow:

[From the Washington Evening Star, June 24, 1969]

CITES CONCERN FOR FAMILY—DETROIT'S MAYOR CAVANAGH SAYS HE WON'T RUN AGAIN

DETROIT.—Detroit Mayor Jerome P. Cavanagh, who in 1961 became the first of a generation of "bright young mayors" claiming to solve the problems of the nation's cities, announced today he would not seek another term.

"The time has come for me to give greater consideration to the lives of my children," the 41-year-old, two-term Democratic mayor told a press conference. He was divorced in 1968.

Cavanagh said he still thinks the majority of the people in the city of Detroit support him.

He said the results of recent mayoral elections and primaries in New York, Los Angeles and Minneapolis, which have been interpreted as showing growing conservatism among urban voters "made my decision more difficult."

"If there was one thing that could have compelled me to run, it was these results," he explained.

Cavanagh, a liberal, indicated he thought it important that liberals stay and fight the growing trend of conservatism among urban voters.

Cavanagh, who has custody of four of his eight children, emphasized the burdens of his office and family responsibilities in announcing his decision.

"It was not an easy decision to reach," he said. "I have served nearly eight years in a job that has been described as one of the most difficult in America, next to the presidency."

Cavanagh, whose city in 1967 was the scene of one of the nation's worst racial riots in modern history, said he was proud of the record of his administration.

"I believe we have made municipal government more responsive and relevant to all the people of the city," he said.

Thirteen candidates already are in the mayor's race.

Cavanagh lost a Democratic primary election for the U.S. Senate in 1966 to former six-term Gov. G. Mennen Williams.

United Press International reported that Cavanagh's decision not to seek a third term appeared to stun his aides.

At a private meeting before the news conference, UPI said, many of the mayor's staff people arrived wearing "Cavanagh Cares" buttons, anticipating the launching of a campaign.

The mayor did not say what his plans would be when his term ends in January.

During the Johnson administration, Cavanagh was often mentioned as a possibility for a major federal appointment.

ASSIST BAR, JUDICIAL CONFERENCE—WARREN TO HELP DRAFT RULES

(By Dan Thomasson)

Retired Chief Justice Earl Warren will assist the American Bar Association (ABA), and the Judicial Conference in moulding a new set of ethical standards for Federal jurists, congressional sources said today.

Within moments after the swearing in ceremony for his successor, Warren T. Burger, yesterday, Mr. Warren expressed to friends his continuing concern over the loss of public confidence in the judicial system—an erosion attributable largely to the outside activities of former Associate Justice Abe Fortas and Justice William O. Douglas.

AMITE, LA.,
June 19, 1969.

HON. JOHN R. RARICK,
House of Representatives,
Washington, D.C.

DEAR MR. RARICK: This letter is being written by me—"Me" being a plain debt ridden, sur-taxed Southern American housewife. There are many more in the South—North—East—West—just like "Me."

My son volunteered for duty in Vietnam, not because he believes in "the war," but because his friends are "there" and the action is "there" and Old Glory is "there." This is a promise. I will not stand idly by on the sidelines with tears in my eyes and watch while the "black nationalist flag" replaces "Old Glory." I heard this happened in New Orleans. The first time it happens before my eyes—Old Glory will retain her place or blood will flow. And so many people misunderstand this same feeling that many Southerners have for the "Stars and Bars." This grand old flag is respected, not so much as a symbol of rebellion, but rather as a banner under which our ancestors fought honorably for the cause of States Rights. We were defeated because we were physically overwhelmed. "Might" still does not make "right." It is still my belief and my interpretation of the Constitution that towns, Parishes and States can better understand local problems and run their own affairs than the Federal Government. What does a Cajun know about building an igloo? What does an Alaskan know about crawfishing?

Since the Federal Judges take wide circles in interpreting the constitution and use this to their own advantage, has the possibility of a very simple and plain amendment to the Constitution been considered? For instance, why not introduce an amendment to the Constitution stating:

"Matters involving the education of children shall be left in the hands of individual local school boards and local school boards shall see to it that tax monies are distributed equally to each school for each educable child."

Now that seems simple enough. Another thing, I don't like the phrase "federal monies." Those Federal monies, friend, belong to me and all the other surcharged-tax paying Americans in the United States and not to the Supreme Court and HEW. And it seems to me we have an awful lot of "taxation without representation."

One thing more, don't feel bad because "The Supreme Court" let Adam Clayton Powell back in Congress. It stands to reason if that bunch don't believe in God, then they've got to go along with the Devil.

Sincerely,

JERRY PULLIAM.

OEO FRAUD

(Mr. ROGERS of Florida asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. ROGERS of Florida. Mr. Speaker, I have come across the most flagrant case of misrepresentation and outright fraud by a Government agency that it has been my experience to see.

The Office of Economic Opportunity has deceived the Congress, other agencies of Government and the American people by its underhanded and self-serving system of evaluating projects.

At great expense, OEO hires outside organizations to evaluate projects. They thus give the impression that the evaluation is an independent one, unprejudiced and unbiased. Then these evaluation reports, in the name of these supposedly independent firms are given wide circulation in support of OEO programs. They are even used by committees of Congress and by the General Accounting Office.

I have written proof, from one of these evaluating firms, that there is nothing independent about these reports at all.

The so-called "specialists" who conduct the investigations are handpicked by OEO itself, not the evaluation firm, so that OEO can dictate the result of the evaluations.

Not even the evaluation firm, which receives the financial benefit of this arrangement, approves of it. It is a clear deception, hidden from those who would read such a report on the letterhead of an outside organization thinking that it is an independent effort.

It is a fraud.

On June 10, in previous remarks about the evaluation of South Florida Migrant Legal Services Program, Inc., I pointed out to the House that Volt Information Sciences Services, Inc., was given a contract by OEO and paid to evaluate that project for refunding.

My investigation shows that OEO itself picked the four-man evaluation team, not Volt. Three of the four selected by OEO had close enough connections to the program to be disqualified. Volt says that they would not select individuals with potential conflicts of interest. But OEO did not permit Volt to make the selections. OEO did so itself.

One individual in particular, the team chairman, is listed as a "Volt consultant" on the report. Yet, the records of the OEO program being investigated show that this man was also the Washington representative of this same program.

OEO selected as chairman of an evaluation team, a Washington liaison man of the project to be evaluated. And OEO required its supposedly independent evaluation firm to pay this man for his services and submit his report as its independent evaluation.

The President has asked Congress to extend OEO for another 2 years. He has appointed a new Director, Don Rumsfeld, and given him Cabinet rank within the new administration. The President and Mr. Rumsfeld have taken over responsibility for a program which requires their immediate attention. Judging from the results of the November election, a majority of Americans voted against many of the policies and practices of the Johnson-Humphrey administration. Their votes, either for Mr. Nixon or for Mr. Wallace, were a clear mandate for change within the White House and the executive branch. Certainly, the poverty program must be high on the list of those programs and policies which must be drastically reformed.

I urge the President and Mr. Rumsfeld to immediately suspend all contracts which give OEO the right to select members of supposedly independent evaluation teams, and to repudiate any existing evaluation reports which have been submitted in this fraudulent manner. I call on them to immediately suspend the South Florida Migrant Legal Services Program, Inc., and to conduct a full and complete investigation, including an audit of all expenditures of the $800,000 given this program, to determine why OEO found it necessary to handpick evaluators rather than permit an honest investigation prior to recommending refunding of this program. And I urge them to authorize a new migrant legal services program, operated by responsible members of the Florida Bar Association and local bar associations, to provide legal services for the migrant and rural poor.

For the RECORD, here is documentation indicating the extent of these conflicts of interest:

First, excerpts from evaluation report, indicating team members.

Second, letter from Volt, confirming contract and fees.

Third, excerpts from project records indicating potential conflicts.

Fourth, letter from Volt confirming OEO selection of evaluators.

The material follows:

EXCERPT FROM EVALUATION REPORT

To: Christopher Clancy, Acting Director, OEO Legal Services.

From: John G. Murphy, Jr., Volt Consultant, Professor of Law, Georgetown Law Center, Washington, D.C.

This report summarizes the findings of a four man evaluation team sent to inspect the South Florida Migrant Legal Services Program April 14–17, 1969. Others on the team were Stuart Land, a member of the firm of Arnold & Porter, Washington, D.C.; Michael Trister, Director of the North Mississippi Rural Legal Services Project; and A. C. Strip, a Columbus, Ohio, attorney representing the Legal Aid Committee of the American Bar Association.

LETTER FROM VOLT DATED JUNE 2, 1969

DEAR CONGRESSMAN ROGERS: Thank you for your letter of May 21, 1969. We have reviewed the performance of four Volt specialists in the performance of a task assignment relating to the South Florida Migrant Legal Services Program, Inc., under the provisions of OEO Contract B89–4391. The results of this review are as follows:

This task was accomplished by the four specialists identified in your letter.

The specialists were or are to be paid fees and incidental expenses as follows:

John G. Murphy, Jr.; a fee of $280 for four days' professional services, per diem of $60, and travel expenses of $177.49.

Stuart Land; no fee, per diem of $52, and travel expenses of $189.00.

Michael Trister; a fee of $280 for four days' professional services, per diem of $60, and travel expenses of $177.49.

A. C. Strip; a fee of $300 for four days' professional services, per dem of approximately $40 and travel expenses to be determined.

It is not Volt's policy or practice to have anyone other than Volt regional representatives select specialists to be engaged for specific assignments.

Volt does not knowingly assign specialists to tasks in which the specialists have interests in the case.

Sincerely yours

DR. DAVID M. SNYDER,
Vice President.

EXCERPT FROM THE REPORT OF EXECUTIVE DIRECTOR, SOUTH FLORIDA MIGRANT LEGAL SERVICES PROGRAM, INC., TO THE BOARD OF DIRECTORS, DECEMBER 20, 1967

"Also while at Georgetown he (SFMLS Assistant Director) met Professor John G. Murphy, Jr., Co-Director, Legal Internship Program, Georgetown University Law Center, who has agreed to act as the Program's liaison man in Washington. His function will be to contact various government agencies upon our request and forward to us such information as he may acquire from these agencies."

LETTER FROM VOLT, DATED JUNE 16, 1969

DEAR CONGRESSMAN ROGERS: It was a pleasure to meet with you and your staff members to discuss your concerns on the project evaluation which was recently conducted on the "South Florida Migrant Legal Services Program, Inc., of Miami, Florida.

As I pointed out, we have a contract with OEO to provide the necessary qualified personnel, facilities, materials and services required to furnish services of specialists and provide assistance and support to OEO/CAP in developing, conducting and administering programs under Titles II and IIIB of the Economic Opportunity Act of 1964, as amended.

Our contract states, "although the Contractor is responsible, OEO, may however, make recommendations to the Contractor relating to the specialists. No specialists shall be permitted to provide services under this contract if he proves to be unacceptable to OEO." Needless to say, we are not happy with this clause.

In the past, OEO with few exceptions has reserved the right to select the specialists to provide technical assistance to the Legal Services Program.

It is our desire, Mr. Rogers, to have complete authority in the selection of specialists for specific assignments. This procedure would enable us to provide quality services which would cause a more effective program.

If we can be of further assistance to you in the future, please feel free to call on us.

With warmest regards.

THERON J. BELL,
Director, Public Affairs.

INDEFINITE WITHHOLDING OF CERTIFICATION FOR DOMESTIC AIR ROUTES TO THE PACIFIC

(Mr. PICKLE asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. PICKLE. Mr. Speaker, the announcement yesterday by the CAB that it was indefinitely withholding the issuance of certification for the domestic routes to the Pacific has added confusion and disbelief to practically all certificated air carriers in America.

This is the fifth delay, at the request of the White House, which the CAB has granted. This delay is causing deep financial injury to many of the carriers involved. It is causing great inconvenience to the public; it particularly leaves Hawaii in an uneasy status.

The Trans-Pacific case has shuttled back and forth several times from the White House to the CAB. During this time the Board has withheld these domestic routes pending some decision by the White House and each time the White House has apparently sent it back for some reason. At the President's own request, the Board last week apparently has recommended to the White House a carrier to the South Pacific with connections from the eastern seaboard to the Midwest and to the South Pacific, following the President's guidelines. If this recommendation was made and not accepted by the White House, the public is entitled to know the reason. If the Board has not made a recommendation or has not given sufficient information to the White House, that reason should be known. If there are other reasons for which this Trans-Pacific case cannot be settled, the public is entitled to know the reason.

Meanwhile, these carriers which have been granted domestic routes, yet have not been granted the certificates because the routes are attached to the Trans-Pacific case, have been expending considerable funds in anticipation of the start of the routes.

It is not fair that they be kept in the dark or strapped to a heavy financial expenditure for an indefinite period of time. They must anticipate the inauguration of the flights, air pilots, hostesses, and other crewmembers, hire advance personnel and establish some kind of office, as well as many other heavy expenses.

The failure to release these domestic routes has a serious impact on several carriers. One carrier may even go bankrupt if this expense is continued, and other carriers have spent $2 to $3 million in anticipation.

In short, Mr. Speaker, the delay in the Trans-Pacific case appears to be without good explanation. On the face of it, it appears unbelievable the way this case has been and is being handled. I call on the CAB and the White House to proceed with an order to settle this controversy. The public and the air carriers are entitled to better treatment.

POLITICAL IMPRISONMENT

(Mr. LOWENSTEIN asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. LOWENSTEIN. Mr. Speaker, not long ago, the South African Government released from political imprisonment one of South Africa's most distinguished citizens, Robert Sobukwe, the leader in happier days of the Pan African Congress.

The civilized world, so long accustomed to dark tidings from South Africa, blinked at the unfamiliar flicker, and hoped for better things to come, perhaps even for a return toward the minimal standards, of a rule of law so long banished from their troubled land.

Now comes the Lenkoe affair and with it, apparently, the early end of fragile hope.

A Lesotho citizen named James Lenkoe was suddenly taken from his home near Johannesburg by the special branch of the South African police. A day later he was found hanging in a cell in a prison in Pretoria. He had been questioned all day, and his wife was told that he had then hanged himself.

During the subsequent postmortem, however, the eminent American pathologist, Dr. Alan Moritz, testified that an injury on Mr. Lenkoe's body had been caused by electric shock. The suspicion that Mr. Lenkoe was in fact electrocuted has grown with the odd behavior of the South African Government since the body was discovered.

Allegations of torture in South African prisons are, of course, not new, but the South African Government has always professed indignation at these allegations.

Now that Government has, among other things, seized the passport of Mr. Joel Carlson. Mr. Carlson is the lawyer who represented Mr. Lenkoe's widow, and who developed evidence of torture in the Lenkoe case. Dr. Moritz said he is "very distressed" by the action against Mr. Carlson, but "not at all surprised."

My experience in Johannesburg made me feel that Mr. Carlson was living dangerously by crusading for human rights—that he was regarded by the government as a public enemy.

Many Members of this House are also very distressed—distressed by the renewed evidence of mistreatment of South African political prisoners, and distressed by the harassment of those who seek to show up such mistreatment and whose efforts one would think would be hailed by the South African Government if its professed indignation about such charges was an indication of a desire to correct such conditions where they exist.

The harassment of Mr. Carlson has provoked a protest from the Lawyers' Committee for Civil Rights Under Law, a group whose members include many of the most distinguished leaders of the American bar. The statement of the lawyers' committee follows:

The Lawyers' Committee has been advised that the South African government has taken away Mr. Carlson's passport, thereby restricting his movements outside the country. The Lenkoe inquest, as a result of the diligence of Mr. Carlson, associated counsel, and the testimony of Dr. Moritz and medical colleagues in South Africa, has cast doubt on the manner of Lenkoe's death. This case has over the past few days received considerable publicity, which has not been favorable to the police and prison officials.

In the opinion of the Lawyers' Committee, any interference with and harassment of an attorney who has, under instructions from others, carried out his duties in the highest tradition of the legal profession, would be totally unwarranted. The Lawyers' Committee intends to continue to instruct and support Mr. Carlson in carrying out his professional responsibility. We hope that he will not be interfered with, and that his freedom to travel, particularly while engaged in counseling clients, will not be infringed. The Lawyers' Committee will seek to continue its interest in the above matters, and its established professional association with Mr. Carlson in the interests of the preservation of the rule of law, which includes the right of any counsel to carry out his duties in dignity and to protect the rights of his clients without intimidation.

The Anglo-Saxon bar has an ancient tradition that lawyers have a duty to defend in court persons accused of crime, no matter how unpopular or dangerous, and to be protected in their exercise of this responsibility by the bar, the courts and, indeed, all arms of a civilised government. We hope that this tradition can and will be preserved by our South African brethern at the bar.

At the same time that these sad events have been taking place, two reporters of the leading Johannesburg newspaper, the Rand Daily Mail, are being brought to trial on charges of publishing false information about prison conditions. In Parliament, the Government has proposed legislation that would add to the immunity from legal procedure of the security police. The New York Times editorial of June 19 summarized the situation as clearly and fairly as anyone could:

SOUTH AFRICAN "JUSTICE"

While trying to maintain the trappings of proper legal procedure, South Africa's Nationalist Government adds steadily to its arsenal of police-state laws and practices. Legislation now in Parliament would make the country's notorious security police immune from any effective public scrutiny.

The Bureau of State Security is already shrouded in secrecy, but the new bill provides severe punishment for any disclosure of a "security matter," specifically including any matter related to security police activities. No evidence could even be given in court if the Prime Minister or anyone designated by him declared it prejudicial to state or public security.

The timing of this move to give security police even greater immunity is not accidental. It is unquestionably related to the Government's seizure last week of the passport of Joel Carlson, an eminent white civil rights lawyer, and to the trial of Laurence Gandar and Benjamin Pogrund of The Rand Daily Mail on charges of publishing false information on prison conditions.

Mr. Carlson is involved in a case which has produced sensational evidence of the use of electric shock torture by security police. This corroborated one Rand Daily Mail disclosure as well as some testimony at the Gandar-Pogrund trial.

James Lenkoe, a Lesotho national, was seized by security police at his home near Johannesburg and his wife was later notified that he had hanged himself in his cell. She contacted Mr. Carlson, who obtained a second post-mortem which aroused the suspicion that Mr. Lenkoe had been electrocuted. Now an eminent American pathologist, Dr. Alan Moritz, has told an inquest that beyond reasonable doubt an injury on Mr. Lenkoe's body was caused by electric shock.

However the court cases turn out, this much is clear: Mr. Carlson has lost his passport because he was too skilled, even when up against monstrous laws and the apartheid system, in protecting the rights of Africans and exposing police barbarism. Messrs. Gandar and Pogrund have been brought to trial not because their disclosures were false but for serving as alert and courageous critics of a tyrannical regime—and thus serving the cause of press freedom everywhere.

The South African Government would be wise to cease its harassment of Mr. Carlson, and to cooperate fully in investigating the circumstances attending Mr. Lenkoe's death. If it is found that Mr. Lenkoe was tortured, one would hope that the government would want to bring those responsible to justice.

The South African Government should also be aware that the trial of the two journalists will be closely watched, that the impression abroad is that those responsible for appalling prison conditions should be punished, not those who expose such conditions.

In the most precise sense of the word, it is the South African Government that is now on trial, not those who are in its political prisons, nor those who seek to make more humane the conditions in those prisons.

The questions of the sugar quota for South Africa and of the continuing permission for South African Airways to land in this country are now under public scrutiny. It is thus both appropriate and inevitable that the behavior of the South African Government should be observed carefully by Americans concerned about how their landing fields are used and how their money is spent.

AMERICAN ASTRONAUT NEIL ARMSTRONG

(Mr. FOREMAN asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. FOREMAN. Mr. Speaker, the eyes of the world are looking for that day when American Astronaut Neil Armstrong steps onto the surface of the moon. In New Mexico—our residents are very proud of this feat—especially since many components of the lunar land-

ing craft were tested at the NASA facility near Las Cruces. Mr. James Carpenter, a public information officer for the Las Cruces schools, is one of these New Mexicans. He has suggested—and the Las Cruces Chamber of Commerce agrees, that all America should fly our Nation's flag on that eventful day. Mr. Carpenter believes a feeling of national pride unequaled since World War II should sweep over our Nation with the success of Apollo 11. Mr. Speaker, I include a letter from the Las Cruces Chamber of Commerce to President Nixon in the RECORD at this point:

JUNE 17, 1969.

President RICHARD NIXON,
The White House,
Washington, D.C.

MY DEAR MR. PRESIDENT: The nation and the world know that the actual landing on the moon will culminate centuries of wonderment by peoples of the world. It also represents years of research, development, testing and planning by thousands of United States scientists.

Mr. Jim Carpenter, a citizen of Las Cruces, New Mexico, has suggested what could be the thoughts of two hundred million United States citizens; that when Neil Armstrong touches down on the moon concurrent recognition of this momentous occasion be made by a nation-wide display of our country's flag. We are all aware that the mission is fraught with danger and that successful accomplishment is not a foregone conclusion. Nevertheless we may hopefully prepare for honoring the occasion. Should this event occur during the hours of darkness, flags could be displayed during the following daylight hours.

The Las Cruces Chamber of Commerce, Las Cruces, New Mexico, wholeheartedly supports this proposal and respectfully asks you to issue an appropriate proclamation establishing procedures for observing this proud and memorable date.

Very respectfully yours,
CHARLES A. PINNEY,
Executive Manager.

MILITARY PROCUREMENT

(Mr. BRAY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BRAY. Mr. Speaker, according to a local publication, former Secretary of Defense Robert McNamara was interviewed by the Boston Globe the other day. He is reported to have said:

No amount of military hardware can buy us security and that is a fact we have yet to learn. . . . The Congress, you see, has bought Defense items the way women buy perfume If it costs more they conclude it must be better. Anything that's shinier, brighter, prettier they think the generals and "our boys" ought to have.

I spent much of my time fighting a Congress that wanted to spend too much on useless military projects. Any number of times I was ordered to begin work on a project which was totally wasteful.

I must confess that I am not surprised at this display of contemptuous attitude toward Congress on former Secretary McNamara's part. I certainly hope the World Bank is not being administered as poorly as the Department of Defense was under him.

The cost overruns and the failure of expensive military equipment of today are the direct responsibility of the systems analysts and the "management experts" of Mr. McNamara's regime.

Mr. McNamara well knows that Congress buys nothing. He should know, since he bought as little as possible; what he did buy turned out to be quite expensive, and in some cases, quite ineffective.

I need not belabor the TFX problem which was the result of a McNamara decision, probably the greatest blooper in American military procurement history. Mr. McNamara was blinded by one concept—commonality—and the taxpayers will be paying for that mistake for years to come.

Mr. McNamara wanted to destroy, for practical purposes, the military reserve structure of this Nation. The Congress prevented that.

Mr. McNamara refused to change our newest aircraft carrier the *John F. Kennedy* to nuclear propulsion despite the vigorous protests of the Navy and Congress. President Nixon pointed out during his campaign that—

Most naval authorities around the world describe that decision as an irretrievable and major mistake.

Mr. McNamara turned down the Navy's request to build the high-speed submarine. If he and his systems analysts had been permitted to have their way we would have stopped building any nuclear submarines after this year. Thank God the Congress and Secretary Clifford reversed that disastrous decision.

Mr. McNamara did not want to build nuclear-powered frigates, but wanted to continue studies instead. Had Mr. McNamara had his way, we would still be studying nuclear power, while the Russians are building more and more nuclear-powered submarines to be able to sink what Navy we have.

If Mr. McNamara, as quoted, said that no amount of military hardware can give us security, then certainly he misled the American people during the 7 years he reigned as supreme purchaser of military equipment in the Department of Defense.

Is he now joining the growing list of people who told Congress one thing while they were in Government, and now, when they are out, tell us the opposite?

Mr. McNamara was a great advocate of the parity concept. That is: Do not try to be superior to the Soviet Union in anything, and they will be good boys and not try to surpass us. That was his theory in ballistic missiles and that was his theory in naval ship construction.

As a result, the Russians are overtaking us, so far as naval supremacy is concerned. They vastly outnumber us in submarines. They outnumber us in cruisers. They outnumber us in amphibious vessels. They outnumber us in minesweepers.

We know that the Russians have at least six new prototype fighters flying. All we have at this point is the F–111, and that is not an air-to-air fighter.

Vice Admiral Rickover would not be on active duty today if Mr. McNamara had had his way. Thank God we had people like Chairman HOLIFIELD, the late Honorable William Bates, and Chairman RIVERS, or Admiral Rickover would have been kicked out and nuclear-powered propulsion would have been set back and America would have suffered.

So poorly prepared were we when the *Pueblo* was seized—thanks to McNamara—that we could not even go to the rescue of one of our own naval vessels in a Korean harbor. Yet, he wasted a billion dollars on the useless "McNamara line" across Vietnam.

History will prove him to have been our most expensive Secretary. A Secretary who produced little but cost effectiveness studies and a huge management bureaucracy—about 50 times larger than when he took over—a bureaucracy which is still stifling our Defense Department.

Morale hit a new low under his regime, so far as the military profession is concerned. But the greatest crime of all was the concept of gradual escalation, which he imposed on our military leaders in Vietnam. The skeletons of 36,000 American boys attest to the brilliance of that decision.

Tears came to McNamara's eyes as he related to a congressional committee his son's concern that his integrity was being questioned in the TFX issue. But now he is reported to have revealed his contempt of Congress with the declaration: "I defied Congress, crept as close to the edge of the law as possible and got away with it because of some damn good lawyers in the Pentagon."

The magic of Mr. McNamara's spell has come and gone. The damage he did while he was here was enough. The least he could do now is to keep quiet—before he does the Nation more harm.

OUTSIDE INCOME OF FEDERAL JUDGES

(Mr. RAILSBACK asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. RAILSBACK. Mr. Speaker, recently the Judicial Conference met. One of the matters they met to deal with was the question of outside income and whether Federal judges ought to be able to earn outside income. I think it was laudable that they decided to prohibit Federal judges from receiving outside income without obtaining permission first.

However, there are two rather glaring deficiencies in the actions taken by the Judicial Conference which lead me to believe that there is still a pressing need for legislation. No. 1, they do not include the members of the Supreme Court within the rules. No. 2, they failed to provide any enforcement provisions.

For these reasons, Mr. Speaker, I have taken most of the recommendations of the Judicial Conference and put them into a bill. I have provided that all judges including Supreme Court Judges, come within the scope of the bill. I have added to it as well some enforcement provisions, so if indeed some of the judges continue to do what they have done in the past, then we, the Federal Government, will have a right to enforce the provisions to prevent them from violating their trust.

The matter of judicial independence

and integrity has recently become a matter of national concern. When discussing this issue it is important to realize that two distinct aspects of judicial independence have been involved. The first relates to the relative position of the Supreme Court as one of the three equal branches of Government under our system of separation of powers. The other aspect is equally important and relates to the fundamental requirement that our judicial structure remain totally free of outside influences separate from those exerted by Congress and the executive branches of Government. To allow one branch of our Government to dominate and detract from the effectiveness of the other two is one thing, but for a branch to lose independence to private interests outside the governmental structure based upon financial or personal gain of its members is even more insidious.

There can be no question that judges and Justices are individuals and subject to the temptations and desires that exist within every human. The law has long recognized, however, that certain positions in our society require that those who hold them put aside those interests and conflicts which would detract from their independence and impartiality. A judicial assignment is a position of high trust and requires more than a discretionary denial or avoidance of inconsequential conflicts. It demands that not only actual conflicts be eliminated, but that appearances of conflicts also be assiduously avoided.

Perhaps no conflict of interest detracts more from the dignity and integrity of a judicial position than a financial conflict, whether proven or implied. Of the many social contacts maintained by judicial officers none is so pernicious as an economic relationship. Nothing impunes a judges' motives as effectively as the suggestion that his decision was tempered or affected by financial ties or the prospect of personal economic gain. What makes this charge so treacherous is the fact that innocent and distant relationships are just as damning as those which actually altered a judicial mandate.

Our Federal judicial system and its esteemed members have, in the past, been forced to conduct their nonjudicial activities without an objective set of standards by which to gage their conduct. While every foreseeable conflict does not lend itself to the application of objective criteria and would not therefore be diminished by their existence, financial relationships cannot be so classified.

The time has come to recognize that our Federal judicial system must once and for all be removed and protected from future financial involvements that have impugned its activities and diminished its effectiveness in the past. Our Nation requires a full-time judiciary devoted to the impartial application of the law of the land. As long as financial conflicts of interest are possible, our courts will never be above suspicion.

As a Nation whose basis for orderly existence is founded upon respect for the law, such a condition cannot be allowed to exist. In an effort to completely remove the cloud of financial conflict of interest from our Federal judicial system. I am introducing legislation which would prohibit the receipt of income for services from sources other than the United States except in those instances where specific authorization was obtained prior to performing the service. In addition, there is provision for the annual disclosure of the nature and extent of investment income in order that it be revealed and made subject to the light of public scrutiny.

Mr. Speaker, the bill I introduce is based in large part upon the recent recommendations of the Judicial Conference of the United States. It does, however, vary in certain significant aspects. First, it applies to all members of the Federal judiciary, including members of the Supreme Court. Certainly the reasons for requiring financial disclosure by lower court judges are equally applicable to those who sit on our highest court. Of what use is a code of ethics for our Federal judicial system that specifically excludes the Supreme Court from its provisions?

In addition, the legislation I propose would strengthen the Judicial Conference proposal by providing that violations would constitute a high misdemeanor. Conviction of such an act would provide grounds for impeachmnt under article II, section 4, of the Constitution.

Service on the highest court of our land and on the other Federal courts is not and can never be a part-time job. The increasing pressures of crowded court dockets on both the trial and appeal levels require constant attention. It is no longer possible to adequately deal with the issues and problems now facing our courts on other than a full-time basis.

The integrity of our Federal courts should no longer be a matter of discussion and debate. There should be no question about such matters. If there is basis or reason for such discussions, the judiciary has failed to meet its responsibility to remain above suspicion.

Mr. Speaker, I intend to circulate my bill to allow those who so desire to join me as cosponsors. In this regard I would welcome their support and interest in this endeavor. The bill follows:

H.R. 12434

A bill to amend title 28, United States Code, to prohibit Federal judges from receiving compensation other than for the performance of their judicial duties, except in certain instances, and to provide for the disclosure of certain financial information

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. Section 454 of title 28, United States Code, is amended to read as follows:

"§ 454. Practice of law by justices and judges; additional compensation; disclosure of financial information.

"(a) No judge or justice appointed under the authority of the United States shall engage in the practice of law.

"(b) Except as provided in subsection (c), no judge or justice appointed under the authority of the United States shall accept compensation of any kind, whether in the form of loans, gifts, gratuities, honoraria, or in any other form, for services performed or to be performed by him, other than that compensation provided by law for the performance of his judicial duties.

"(c) A judge or justice may accept compensation other than that provided by law for the performance of judicial duties if, upon application of such judge or justice, the judicial council of the circuit (or in the case of a judge or justice on a court which is not part of a circuit, the judges or justices of the court who are in active service) approves the acceptance of such compensation upon a determination that—

"(1) the services are in the public interest or are justified by exceptional circumstances, and

"(2) the services will not interfere with his judicial duties.

The services to be performed and the compensation to be paid under this subsection shall be reported to the Judicial Conference of the United States and made a matter of public record.

"(d) Each judge or justice shall file annually (commencing May 15, 1970 for the preceding calendar year) with the Judicial Conference of the United States, on forms to be approved by the Judicial Conference, a statement of his investments and other assets held by him at any time during the year as well as a statement of income, including gifts and bequests, from any source, identifying the source, and a statement of liabilities.

"The statements shall be kept on file with the Judicial Conference and available for such use as the Conference and the Judicial Councils of the circuits may require, as well as for public disclosure as determined by the Judicial Conference to be in the public interest, pursuant to regulations promulgated by the Conference.

"(e) Any judge or justice who violates subsection (a), (b), or (d) is guilty of a high misdemeanor."

Sec. 2. The item relating to section 454 in the table of sections for chapter 21 of such title is amended to read as follows:

"454. Practice of law by justices and judges; additional compensation; disclosure of financial information."

EXPROPRIATION IN PERU

(Mr. EDWARDS of Alabama asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. EDWARDS of Alabama. Mr. Speaker, on October 9, 1968, the Government of Peru expropriated the assets of the International Petroleum Co., a U.S.-owned company in Peru.

I suppose any national government has the right to take control of foreign owned property, but certainly the owners have a right to fair compensation.

This principle is given recognition in our law by the Hickenlooper amendment to the Foreign Assistance Act of 1961 as well as section 408(C) of the Sugar Act. The Hickenlooper amendment provides that when any country expropriates U.S.-owned property and fails to provide compensation within 6 months then U.S. assistance programs are suspended.

On April 9 the 6-month period expired without compensation by Peru. The State Department agonized for some time about what to do, and decided to do nothing.

This was hailed as a victory. Specifically, one report said it was a "triumph of diplomatic one-upmanship" by the United States.

On the day before the expiration of

that 6-month period, April 8, a crowd of people in Lima attacked the U.S. Information Service there with rocks and Molotov cocktails. They charred a front door and shattered a large window.

Since that time Peru has seized American fishing boats operating within what Peru claims as 200-mile coastal waters but well outside of the 12-mile zone which has been considered as an international standard and which this country recognizes.

Yesterday, according to news reports, the Peru Government expropriated land holdings including substantial land owned by citizens of this country.

Mr. Speaker, these are facts which are on the record for all to see.

I call upon our Government today to suspend all programs of assistance to the Government of Peru in accord with the Hickenlooper amendment.

I say to my colleagues that if provisions of the foreign assistance legislation cannot be implemented, then further appropriations for the program should be seriously questioned.

One would think that after 20 years of trying to make defeats look like victories in our diplomatic dealings with other countries, we would catch on. But we do not.

Neither Peru nor any other country is going to stop harassing the United States so long as we knuckle under to every outrage perpetuated on us, calling it a new and greater triumph.

Let us use some commonsense in our dealings with other countries, just once.

DAVIS—THE UNIVERSITY THAT MRAK BUILT

(Mr. LEGGETT asked and was given permission to address the House for 1 minute, to revise and extend his remarks and include extraneous matter.)

Mr. LEGGETT. Mr. Speaker, this month at the Nation's leading agricultural college—the University of California at Davis, in my congressional district—the chancellor will retire.

Emil M. Mrak is perhaps as unseemly a name as SPIRO T. AGNEW—both describe important Americans. Mrak assumed chancellorship of the old Cal Aggie College 10 years ago and carefully managed the broadening of the curriculum, the development of a new law school, the development of a new medical school, and a college enrollment expansion from 2,500 to 11,100 this spring.

The Davis campus for my money and my daughter, Diana, is the best in the West, and Mrak made it that way.

By personalizing the university administration, Emil Mrak has helped to bridge the gap between students and faculty and sometimes the larger gap between faculty and administration.

During the Davis-Mrak years, many wonderful things happened in American agriculture. Mrak was one of the first to detect and become alarmed at the agricultural pollution of our economy and he took steps to effect change. At Davis, we invented the quick frozen dried method of dehydration and more agriculture machinery than any other specific center in the country.

The university that Mrak built was described in the University Centennial magazine last year, as follows:

DAVIS

This campus, spreading over 3,800 acres in the Valley, lies beside a small town, surrounded by rich farmlands. It physically resembles an Ivy League campus, with hundreds of trees, green and spreading over sprawling lawns. Here students and professors alike bicycle along paths without cars.

It retains some of the flavors of rural life, only a nostalgic memory on most larger American campuses today. The informality, friendliness, and an effective honor code at exam time are characteristics of the campus.

These stem from what was once called the University Farm, founded 63 years ago at Davis to help the California farmer. Davis has since grown into a general campus with 10,000 students, and there are plans for 9,000 more. But the origins in agriculture remain evident in the style and prestige of the place.

The College of Agricultural and Environmental Sciences has made many contributions to agriculture, still the state's leading industry, and since 1922 the college has offered four-year undergraduate programs. Annually, it attracts hundreds of foreign students from developing countries where techniques learned at Davis can help in grappling with desperate problems related to hunger. Its scientists have helped provide resources for connected studies such as the new Institute of Ecology and a National Center for primate Biology.

The latter relates especially to the School of Veterinary Medicine, established in 1946. This school, in turn, is planning coordinated research with the School of Medicine, which will take in its first students next fall. At the same time, many studies at the Food Protection and Toxicology Center have significance far beyond the farmer's fields.

Today, the College of Letters and Science offers programs in 26 departments. The College of Engineering and the Law School are expanding rapidly. Research includes a Radiobiology Laboratory for studying long-term effects of radiation and the Crocker Nuclear Laboratory for the study of low and medium energy physics. The Institute of Governmental Affairs concentrates on state and local government problems, and there is a new Center for the Administration of Criminal Justice.

Amid this increasing complexity, the campus administration is striving to retain the warmth of earlier days. Nearly half the students live on the campus, and recreational areas are being expanded. So far, the efforts have succeeded. Students, specializing in nuclear engineering or political science, adopt the "Aggie" nickname and use it as a theme for activities on the campus. The rustic flavor is generally enjoyed as a tradition, although certain segments of the student body now treasure it for its vanishing virtues.

Emil Mrak is not complacement over his success nor is he oblivious to the problems facing Davis and other universities in the coming few years.

I fervently hope that the university continues to grow in the Mrak mold with his keen communication and understanding. I would hope that we would really not learn to love and cherish the Mrak years as an end in and of themselves, but a sturdy foundation upon which future western education was built.

Last week Ron Blubaugh in the Sacramento Bee described his final interview with Emil Mrak—my candidate for a great American. The article follows:

UCD'S MRAK FEELS DISTORTED NEWS IS HELPING DESTROY UC

(By Ron Blubaugh)

DAVIS.—Emil M. Mrak will not be retiring this summer with the usual buoyant feeling that goes with the completion of a job well done.

Instead, Mrak will carry a certain sense of sadness with him from the chancellorship of the Davis campus of the University of California. It is a sadness rooted in a belief that no matter what he has done, the University of California is suffering, perhaps fatally.

"My feeling is that there are forces out to destroy the University of California," Mrak said in a recent interview. "I am convinced myself, that if it is not already destroyed, it is badly damaged.

"I have told my wife I am almost sorry I did not terminate my chancellorship last year. It is so discouraging. We don't have any money. I have to spend all my time keeping peace."

Mrak has been a UC faculty member for 32 years, the last 10 as Davis chancellor. He cannot recall a more difficult period for the university or for higher education.

"The great strength of a democratic society is its university system," he said. "I think the forces out to destroy the university are aiming at democracy. I am so depressed about the thing because I almost wonder if our society is on the way out. I really worry for my children."

If such remarks seem unusually candid, they will come as no surprise to long-time acquaintances of the chancellor. He has a reputation for being blunt.

"He says what he thinks," is the way Dave Ernst, UC Davis student body vice president, described Mrak. "That is what people appreciate about him."

More than one reporter can personally attest that Mrak speaks directly—and in no vague terms. He has been known to evaluate the work of a newsman in salty sailor words. So strongly does he feel about the news media that he accords it a special place in his analysis of the grief of higher education.

DISTORTED VIEW

As the chancellor sees it, campus woes start with the actions of a radical group of students. The news media distort these activities by larger-than-life reporting. This leads to an adverse reaction by the general citizenry bringing pressure on politicians who then lash out at the campus.

"I have always said the left started working on labor and was not successful so it now is working on the universities," Mrak explained. "There are relatively few who are nihilists but they are out to destroy everything. They are always looking for an issue. More moderate students then join in on the issue and something happens that gets them all going. It ends up with the madness of crowds."

Then come the news media.

"We have some people who read and believe the newspapers when what they have is inaccurate; and believe the television when it is so perverted," Mrak said. "These actions of the newspapers and television create what the destructionists want. They are marvelous fuel on the fire. It helps them."

Angry as he can be with the newspapers, it is television which really raises Mrak's ire. Television can create the illusion that the viewer sees the event when in reality he sees only a portion of it.

TV INCIDENT

"I am really disturbed by television," he said. "When I was in Costa Rica (two weeks ago) there was a group of 50 to 75 students outside the presidential palace yelling "Go home Yanks." NBC was there and right in the middle of it.

"Then another group of students came in there to chase the first bunch away. The television team folded up their cameras and ig-

nored it. To me, this is typical of television with all of its subtle implications to destroy our society."

Where does this lead? To a public reaction Mrak calls "murder."

"I have a very disheartened and dismal outlook on the future of higher education in California for years to come. The citizens of this state, instead of trying to make educational changes and improvements, are saying 'If this is the way the students are we will have to penalize them.' This does not help the state. It is going to hurt the state, in my opinion.

"I have a feeling the politicians are frustrated. They want to see this thing stopped. So do I. A lot of them feel they should leave it to us.

"But there is not as much interest in the university. There is not as much interest in paying for it. I have had many politicians tell me that supporting the university is a liability to them. So why should they bother?"

SON OF A CHEF

Born in San Francisco in 1901, Mrak is the son of a chef turned restaurant owner turned prune grower. And he might have followed in his father's career were it not for the price of prunes the year he finished high school.

Prune prices were so low it was barely possible to make a living from that year's crop. Mrak decided to go to college rather than become a grower. He went to UC Berkeley and worked his way through school. Later, he obtained a doctorate and became known as one of the world's authorities on yeasts, particularly as they affect food preservation.

He has won a number of honors for his research and knowledge about food technology. He was chairman of the department of food technology at Davis and Berkeley when he was named chancellor.

During Mrak's tenure as chief of Davis, the campus has been transformed from an agricultural campus to a full university. Enrollment grew from 2,500 students in 1959 to 11,100 this spring. The size of the faculty jumped from 448 to 1,559. The budget rose from $13 million to $65 million.

Such statistics tell part of the story of Mrak's tenure, but not really the portion he favors. Mrak considers holding down the growth to be one of his greatest accomplishments.

"I battled it," he said. "I am still battling it. There is nothing magic in the figure of 27,500 students (the UC-established size for all general campuses but Davis). Nobody knows how they got that figure. They had to cut the Berkeley campus off at some place and that is what the enrollment was when they decided to cut it off.

"We have had on this campus a fine student-faculty relationship. We have had an honor spirit. You can't maintain the faculty-student relationship and honor spirit at a monstrosity like Berkeley or UCLA.

"The people in Berkeley (at the statewide UC headquarters) look at statistics. They don't look at the educational problems in such size, or the people or the human problems. All they think about is their damned figures."

Although he has won some battles with the statewide UC administration, Mrak is not convinced he won the war. The first enrollment ceiling at Davis was 5,000 students, Mrak explained, then 10,000 then 15,000 and now 18,500.

"We have been fighting a rear-guard action all the way," he said.

Next fall, the growth will for the first time exceed the room on the campus.

"We will turn away our first qualified applicants," he said.

Mrak's answer to operating a university campus is good communications.

"What is needed is personal communication," he said. "The next chancellor (James Meyer) will have to do it. But how do you talk to 11,000 students? I don't know. This is the trouble with our larger campuses."

At Davis, Mrak has sought to handle the communications problem by keeping an open door to students. He invites them to visit him and let off steam. They do. They go to his office. They stop him on the campus. They go to his home. He puts his students first. They rank ahead of the paperwork and the bureaucratic problems of administering a giant school.

GIVE AND TAKE

"He goes out of his way," said Jerry Takehara, a junior. "There is a lot of give-and-take. He figures that with communication there is less chance for misunderstanding. You saw what happened today. He put us ahead of you."

Takehara's reference was to Mrak's decision to keep newsmen waiting past an appointment in order to keep his commitment of an open door to students.

Anyone walking across the campus with the chancellor can see the informality he has with students. They walk up to him and engage in easy conversation.

Mrak moves as easily with local businessmen as he does with students. Among some of his business associates in Yolo County he is known as a good man with a "gut bucket." A one-stringed bass rhythm instrument. He is said to have given displays of musical wizardry on this washtub fiddle at more than one party.

And as easily as he moves with students and businessmen, Mrak also walks in the highest levels of government. He currently is a member of a presidential commission visiting the Latin American nations to "look and listen." Gov. Nelson Rockefeller is the chairman of the commission. Mrak is one of 20 advisers accompanying the New York governor. The Davis chancellor was chosen because of his knowledge about food and agriculture.

He also is a member of several foundations.

Officially Mrak's last day on the job is June 30.

"Really, I am sliding out of it all too fast, now," he said just before leaving on a five-nation tour last week.

Chancellor Mrak in the university school of medicine February report set forth his own perspective on higher education, as follows:

THE CHANCELLOR SPEAKS

I would like to discuss some of the changes going on in the universities today, and I can assure you that some of the changes are just as puzzling to me as they are to you. And, as you well know, these changes are not in any way confined to Berkeley, or to California, or even to the U.S. Students in most parts of the world are making themselves heard. I cannot speak for the students abroad. but I may be able to bring out some of the aspects of the changes here in California.

In this, my final year as Chancellor, I have been looking back a little to note the many changes that have occurred since my college years began in the dark days of the depression in this country—the early 1930's. Those were the days often referred to as the Joe College, Rah-Rah days, the days of the coonskin coat and the football hero we have all seen depicted in some of our American movies. It was a difficult time for the poor boy in this country to get an education, and many of us had to take whatever menial job we could find to keep in school. There was also a very clear class distinction between the lowly freshman, the sophomore and the upper classman. But that was the time, too, when class distinctions started to disappear. For one thing, the sophomores began wearing blue jeans and lumber jack shirts—a brazen step toward change. And, in those days too, the faculty was all powerful, but, I like to think, very responsible.

Following World War II we saw great changes in the universities. For one thing there was the tremendous influx of war veterans attending on government support. This brought many into the colleges and universities who would otherwise never have been able to afford it. It also helped break down the last class barriers among students. We also began to see the great increase in government support of faculty research—and with it an increased emphasis on research and the "publish or perish" notion of the faculty. This in many ways made the faculty more aloof from the students, since the faculty interests inadvertently turned to more and more research. This change in interests and emphasis, I believe, changed the philosophy of the basis for appointment and promotion. The Russian space program, too, gave a further boost to the idea of more research and more intensive science and engineering education.

These changes were most dramatic in the curriculum of the high schools, with greater emphasis on the sciences and basic educational courses. When these highly trained young students began showing up in the colleges and universities, they felt that the higher education had not moved ahead far and fast enough. They then began to make their thoughts known. Ironically, while the students and administration were interested in making changes, the faculties were not. The faculty is always the most conservative body on the campus, when it comes to matters of direct concern to them, but extremely liberal when it comes to matters relating to others.

On the campuses, we were stuck with the old rules of former years, but at the same time a changing type of student. Much of the cause of the free speech movement, I believe, came about because of the retention of pre-war rules on the campuses.

Furthermore, we see the disadvantaged groups flexing their muscles and making their needs known very strongly. If one group feels it is not getting its full share of rights and privileges, it demonstrates in one way or another, to promote its interests, or what it believes are its interests. Certainly each group should receive its full share and equal treatment—this we cannot deny. Many individuals in our state and nation have long ignored the rumblings of the unsatisfied groups, and are suddenly confronted with a major crisis.

Certainly the faculties have not been ready for this crisis. They are slow to accept new ideas, as I said. The Regents and the faculties need to clearly define and accept responsibility as well as authority. Currently, the Chancellor is caught in the middle. He has very little power to bring about changes—he can only use persuasion. On our own campus we have been fairly successful in meeting the needs of the students in their pleas for a more meaningful and a more exciting education, but we still have a long way to go.

My personal philosophy in handling the many problems of a rapidly growing campus in these times, is to try to listen to all sides, and all groups, and to try to bring representatives of each group together. But this takes a tremendous amount of time and effort. We put students on as many committees as possible in order to get them involved in the administrative process. And too, our Academic Senate is beginning to listen more to students when it comes to educational innovation and planning.

When President Hitch stated last spring that the University would be directly involved in the Urban Crisis program, we immediately brought together a group of students and faculty to recruit economically disadvantaged students to Davis. Most of the recruiting was done by the students over the past summer, and we have been very successful. A large number of these students are now studying at Davis, under special scholarship programs.

The same student-faculty committee is now involved in other aspects of the Urban Crisis program.

Recently, we inaugurated a program called Project Involvement in an effort to involve students, faculty, alumni, and staff members too in discussions and planning sessions concerned with problems facing the campus. It is very gratifying to see how well the program has been received, and how nearly 30 task groups are discussing all types of programs, such as greater communications on the campus, educational reform, our place in international communications, our involvement in urban extension, man and resources in the face of growing population pressures. We have great hopes for this program and have found a high degree of campus participation.

In reviewing the changes and problems facing us in higher education today, I cannot forget the press and TV. With the first cries for higher quality education at the beginning of the space age, and a little later with the free speech movement, the press "discovered" higher education as good news copy for selling more papers. In many ways the press and TV helped bring out the needs of education. But they also added greatly to its problems, and, as I see it, possible destruction—yes, possible destruction—by misrepresenting student activities. The press and TV are powerful tools, and dissident students know how to use them to their advantage. In reporting the activists' side, the press all too often overlooks the less exciting efforts of the great mass of students and faculty to get changes made. Our students constantly complain that the few who hold a rally against the administration get full attention from the press, but the many, very many more, indeed, who tutor disadvantaged students or sponsor a summer camp for them, etc., get no coverage, or at least very little. It just is not dramatic enough for the press. Perhaps we need to educate the reading and viewing public as well as the press.

In these remarks I have tried to point out some of the changes and problems facing us today in higher education. Unfortunately, I do not have answers. We are all seeking those answers, and any suggestions are welcome. I would like to list several broad points I think the Regents must consider if we are to have peace and quiet on our campuses.

1. Academic freedom.
2. What does the delegation of authority to the faculty mean?
3. What is faculty responsibility—not now defined.
4. Where does the administration fit in—now impossible.
5. Define procedures.
6. Recognize the impossibility of rules and laws.
7. Define good taste.

EMIL C. MRAK.

NARCOTICS CONTROL LEGISLATION

The SPEAKER. Under a previous order of the House, the gentleman from California (Mr. TUNNEY) is recognized for 60 minutes.

Mr. TUNNEY. Mr. Speaker, the extremely serious problem of narcotics and dangerous-drug addiction in the United States has been thoroughly documented in recent years. There can no doubt of the socially corrupting influence of addiction—especially with its major role in the rapidly rising crime rate.

There is a wide-ranging variety of laws designed to curb the selling and use of narcotics in the United States, but it is obvious from arrest and conviction statistics that such laws are not having the desired effect. It therefore is equally obvious that the next legal steps must be aimed at stopping the flood of narcotics into this country.

A recent factfinding visit to the California-Mexico border at San Ysidro, across from Tijuana, allowed me to observe the relative ease with which narcotics can enter the U.S. Federal border-inspection personnel are forced to cope with a crushing amount of pedestrian and vehicular traffic daily. Only 1 percent of the vehicles entering the United States ever are searched, and the decision to search is frequently made on the basis of an inspector's intuition. Federal officials tell me there is no way of knowing how many vehicles pass through with contraband cargoes. Long lines of cars, often forced to wait as long as 1 hour, develop from the inability of our inspection personnel to process them any faster while still attempting to stem the flow of narcotics. And it can be safely assumed that the vast majority of travelers are law-abiding citizens enjoying our sacred principle of open borders.

Therefore, I am introducing legislation that would increase by 50 percent the personnel strength of our border inspectors. It would be a first small step toward more effectively stopping the narcotics traffic, while at the same time serving the public's right to unimpeded foreign travel.

During my discussions with Federal customs and narcotics authorities, I was shocked to discover that the majority of dangerous drugs—more specifically, pills—confiscated by our border inspectors were manufactured by well-known U.S. drug firms.

It was explained to me that, quite legally, such firms can fill orders from foreign purchasers without any verification other than a foreign address to which the shipment is to be consigned. It works like this: The U.S. drug firm receives an order from a Mexican drugstore for a commercial quantity of pills of the type we consider dangerous drugs. The shipment is sent to a California warehouse near the border, but consigned to the drugstore. The "store" usually turns out to be nonexistent, according to Federal investigators.

A Mexican national claiming to represent the drugstore picks up the shipment in California. Up to this point, no U.S. law has been violated. The individual then either smuggles the pills into Mexico to avoid paying Mexican taxes, or simply sells the pills illegally in the United States. But those pills confiscated at the border are those which were smuggled into Mexico and then sold to peddlers—usually Americans—who attempt to smuggle the dangerous drugs into the United States for illegal sales, mostly to juveniles.

There is no way of knowing how many American-made pills end up on the illegal U.S. market without ever leaving the country. But an indicator of the vast quantity of pills labeled "Made in U.S.A." and which the wholesaler intended to be sold illegally in the United States is in the scores of boxes of confiscated pills stored in the Bureau of Customs' vault in San Diego. And an indicator of the increasing traffic in narcotics and dangerous drugs lies in the statistics on arrests for their possession and usage.

Arrests of adults in San Diego alone are up 400 percent since 1960, and arrests of San Diego juveniles are up 1,400 percent during the same period. Yet the border inspection system and manpower have remained basically unchanged during the last 5 years.

Remedies have been suggested which are acceptable to one Federal agency but not to the other. The manufacturers and distributors clearly do not want to be overregulated. The gravity of the problem coupled with its complexity calls for a study by the concerned agencies, so that Congress may be sent their best thinking on the problem and the interdepartmental friction may be eliminated before congressional consideration begins in the appropriate committees. Therefore, I am introducing companion legislation calling upon the Attorney General, the Secretary of Health, Education, and Welfare, and the Secretary of the Treasury to conduct a comprehensive investigation and study of the extent and nature of the illegal importation of narcotics and dangerous drugs into the United States, and to report to Congress within 12 months with findings, conclusions, and recommendations.

IN PROTEST OF CUTTING OF FUNDS FOR PORT OF NEW YORK AND NEWARK BAY

The SPEAKER. Under a previous order of the House, the gentleman from New Jersey (Mr. DANIELS) is recognized for 60 minutes.

Mr. DANIELS of New Jersey. Mr. Speaker, I rise today to protest against administration measures which very literally make the northern New Jersey-New York area the stepchild of the Nation.

I am making reference to the double-barreled attack upon the Port of New York. As all Members know, the original budget of the Army civil works program for fiscal year 1970 has been sharply cut back. Had the cuts been uniform we would not be on the solid ground we are today. On the contrary, the cuts show obvious discrimination against the New York-New Jersey port area.

Originally the budget called for $769,420,000. The revised budget now calls for a cut from the earlier figure to $627,055,000 which represents a slice of 19 percent.

Confining our examination today to the Nation's 17 major seaport projects, which were funded in the original budget for fiscal year 1970, we find that of this figure a reduction of 36 percent was affected.

Of the 17 seaport projects, eight sustained no cuts at all.

The two port of New York projects actually sustained 39 percent of the total recommended cuts in the funding of all major seaport projects throughout the Nation.

Contrast this, if you will, with the cut made in the Arkansas River project which was cut back by only 2 percent from $59 to $58 million.

Or, the C. & D. Canal which is designed to link the Ports of Baltimore and Philadelphia. It was cut only a token 8 percent.

The $4 million for the widening and deepening of the channel of the Port of Providence, R.I., was not cut at all.

If the administration used a surgeon's

scalpel on other projects in other parts of the Nation, it seems equally clear that a meat ax was used on the Port of New York.

Mr. Speaker, this House and the other body as well, has made known that it wants action in Newark Bay. The Congress has authorized funds for this project in the last 2 fiscal years. However, the executive branch of the Government—and I have no partisan ax to grind because the present administration is no more at fault in this matter than the previous one—has to date, directed that no work be started on this project.

Now, of course, with the "freeze" on, the administration is using the fact that no work has been done is justification for not starting any work. Clearly, this is circular reasoning at its worst.

I do not wish to leave the impression that we who are protesting today are merely porkbarrelling and ignoring greater justification in other parts of the Nation for similar projects because our area is involved. Far from it.

We think these two projects are vitally needed for the safe and adequate handling of the large tankers and the burgeoning movement of container ships and other large vessels which use Newark Bay and the New York Harbor.

Mr. Speaker, we are prepared to make out a case for the New York Port area. We ask no special consideration. We seek to have these funds restored because the Port of New York is of concern to the health and safety of this Nation. On the other hand, as legislators from this area we cannot be asked to support projects remote from our own constituencies unless our area receives equal treatment. And, Mr. Speaker, the New York-New Jersey Ports have not received their due amount of consideration from the Federal Government.

Mr. Speaker, let us for just a moment look at what a little Federal assistance can do for the Port of New York.

It is significant to take note that the half a billion dollars invested in new and rehabilitated docks and wharves in the Port of New York, from 1946 through 1965 resulted in nearly 100 new or modernized ship berths. This is more than half of all the new facilities built or renewed in the entire Nation for the same period, and seven times the ship berths built or reconstructed by the second-ranking port area. It is another fact that while the U.S. port industry invested more than $2.5 billion in terminal investment for the period throughout the Nation, the Federal investment in seaport channel development for a comparable period was less than half this non-Federal investment. In New York Harbor, this 1-to-2 ratio between Federal and non-Federal investment is not being maintained. Through the late 1940's to the mid-1960's, the annual average Federal investment in the construction of ocean channels in the Port of New York has been about $3 million, while non-Federal investment in terminals has averaged about $24 million. This represents a 1-to-8 ratio, which indicates that the rate of Federal investment in our harbor is well under the national average.

Mr. Speaker, there are a number of distinguished Members who can spell out what these programs mean to specific areas within the New York Harbor, Newark Bay port areas. I am happy to have so many New York and New Jersey Members with us today. I think this points out the fact that we in the New York metropolitan area mean business and that we are in dead earnest about the discrimination against the economic interest of New York and New Jersey.

Mr. Speaker, it is our hope that President Nixon will have second thoughts about this unwise decision and that he will use his good offices to restore these funds to the executive budget and that the able chairman, the gentleman from Texas (Mr. MAHON), and the other distinguished members of the great Committee on Appropriations will do their share toward funding these two projects.

Mr. SANDMAN. Mr. Speaker, I am concerned that a 36-percent cutback in funds for the Newark Bay channel has been proposed in the revised executive budget for fiscal year 1970.

In 1966, the Congress and the President authorized a deepening of the north reach of the Newark Bay channel from its present 32 feet to a new depth of 35 feet, as well as a deepening of the Hackensack River from 30 to 32 feet in a 4-mile area. As part of the overall Newark Bay-Hackensack River improvement project, the provision of a maneuvering area 1,300 feet long and 900 feet wide just below the Passaic and Hackensack Rivers was also approved.

Water commerce on Newark Bay plays a key role in New Jersey's industry and industrial jobs. Of particular interest is the importance of petroleum, and the fact that in 1966, 410 ocean tanker movements—that is, vessels drawing more than 19 feet of water, handled petroleum products on Newark Bay. Of these, 176 ships upon arrival in Newark Bay drew 29 or more feet of water. This means that these vessels could have navigated the present 32-foot-deep north reach only at high tide.

In addition to petroleum, the industrial terminals along the northern shore of the bay, and lower reaches of the river, handle the waterborne movements of sulfur, chemicals, coal, and asphalt. Some of the larger industrial-type tonnages handled on Newark Bay in 1966 are as follows—in short tons:

Aluminum ores and concentrates	17,330
Chrome ores and concentrates	57,858
Crude petroleum	49,728
Salt	70,945
Basic chemicals and plastics	366,146
Soap	73,796
Gasoline	1,330,232
Jet fuel	1,143,651
Kerosene	499,509
Fuel Oils	1,914,687
Naphtha	73,296
Iron and steel products	366,768
Copper alloys	171,294
Iron and steel scrap	706,210

I think it is clear that the deepening of the northern reach of the Newark Bay channel and the deepening of the Hackensack River will prevent costly delays to such vessels awaiting high tide and contribute to the overall economy of New Jersey and the Nation.

Mr. MINISH. Mr. Speaker, I rise to associate myself with the remarks of the distinguished gentleman from New Jersey (Mr. DANIELS). As he has demonstrated, the proposed budget cuts for seaport projects clearly discriminate against the New York-New Jersey ports.

Widening of the dangerously narrow Newark Bay channel was authorized by the Congress in the Rivers and Harbors Act of 1966. Twenty-two civic and maritime organizations from the New York-New Jersey metropolitan area have recommended that $5 million be provided to launch this project in fiscal year 1970. The previous administration called for only $3.5 million to widen the Newark channel. Unbelievably, this figure has been cut 86 percent, to $500,000, in President Nixon's revised budget.

Mr. Speaker, there have been numerous serious accidents in the Newark Bay channel in recent years as more and larger vessels attempt to navigate the narrow passage. I urge that the full $5 million be appropriated to begin this vital project.

Mr. HELSTOSKI. Mr. Speaker, I represent a congressional district which has a considerable stake in the economic well-being of the Port of New York and the Newark Bay channel. Because of this, I am quite concerned over the administration's proposed cuts in the executive budget for fiscal year 1970, and I feel that it discriminates against the New York-New Jersey ports.

The original budget for fiscal year 1970 recommended $3.5 million for the Newark Bay channel project. In reviewing the recommended figure, the present administration reduced this figure to $500,000, a figure which will keep the project alive but will not provide funds to make any headway. In addition to this, the administration made a $2,400,000 cut for the improvement of New York Harbor anchorages—a very severe cut which will have to be restored at a future date, but greatly crippling any increase in anchorage capacity needed immediately.

The total budget cuts recommended by the administration for 17 major seaport projects amount to 36 percent of the requested amount. The total budget cut amounts to $13,750,000, of which the New York-New Jersey ports are expected to absorb $5,400,000 or 39 percent of the total reduction.

I cannot agree with the thinking of the administration on this problem. The appropriations for the New York-New Jersey harbor facilities should have been increased rather than decreased.

At the height of the recent longshoremen's strike in New York Harbor, as many as 41 ships were reported to be at anchor at one time in the upper and lower New York bays. Where they found room to anchor is something of a mystery to me, since there are at present no more than 17 deepwater anchorages officially designated for this purpose in these two areas. Plans authorized by the Congress and the President in 1965 call for increasing this capacity to 25 spaces, and for enlarging certain existing anchorage spaces to safely hold today's larger vessels. So far, nothing has been done to provide this improvement.

Despite today's electronic aids which have limited value for close-in navigation in congested harbors, anchorages

which are wide and deep enough and, hopefully, empty, have considerable safety value for the mariner in fog or heavy rain and snow as a place to keep clear of difficult-to-see channel traffic. Anchorages are also used by bulk carriers awaiting anchorage, and by large tankers that must await a higher tide or lighten oil cargoes into barges to allow these vessels to enter the port's inadequate East River, Kill van Kull, Arthur Kill, and Newark Bay channels to their unloading terminals. Actually, sample studies by the Port of New York Authority have shown that often vessel demand exceeds anchorage capacity in the harbor.

Port interests are seeking to have additional 40-foot-deep anchorage space provided in the Lower Red Hook Flats for use principally by tankers as part of the overall improvement of the New York anchorages accomplished quickly and with no further delay. I submit that the improvement is vital to the entire harbor and necessary for safer and more efficient navigation. Accordingly, I wish to give it my full and unqualified support.

Mr. RODINO. Mr. Speaker, I am pleased to join with my distinguished colleague from New Jersey, and my neighbor across Newark Bay, in urging restoration of the cuts made in the budget request for funds for the urgently needed work in Newark Bay channel and the New York Harbor anchorages.

In the 27 years following the opening of Port Newark in 1918, the seaport operated at a loss and cost New Jersey taxpayers nearly $400,000 a year. By 1947, 1 year before it was leased to the Port of New York Authority, the seaport handled a little over 800,000 tons of cargo and employed a steady work force of about 1,500 persons with an annual payroll of $33,280,000. About nine out of every 10 of these employees and those working at the nearby Elizabeth-Port Authority Marine Terminal, live in New Jersey.

How has this fantastic growth come about? Since the facility was leased by the port authority, more than $105 million has been spent on its improvement, so that today this 707-acre facility boasts 36 ship berths and, together with the Elizabeth terminal, handles some 40 percent of the Port of New York's general cargo. By 1975, another $20 million will have been spent to complete the entire facility which will at that time offer 37 ship berths, will handle about 5.7 million tons of cargo and employ 5,300 persons earning $39,700,000 a year. There can be no doubt that Port Newark is a vital segment of New Jersey's economy. It offers employment in the heart of an area that urgently needs jobs and employment.

In 1919, a year after Port Newark was opened, the Federal channel serving the seaport was authorized for deepening to 20 feet and widening to 400 feet. And while the channel today is 35 feet deep, it is incredible to realize that despite today's much larger and increased numbers of vessels using Newark Bay, the channel still narrows in one section to 400 feet. It is beyond doubt that a widening of this channel—to a uniform width of 700 feet as authorized in 1966—is critically needed if this vital harbor facility is to continue to grow to serve the Metropolitan New York-New Jersey region and if the ocean vessels that use it are to be assured safe navigation.

Mr. Speaker, I strongly urge that a realistic level of funds be approved. The original budget called for $3.5 million for the Newark Bay channel project, and it is most disheartening that the present administration has unwisely reduced the request for these funds to the appalling pittance of $500,000. Congress, I feel sure, has better knowledge and foresight and will act accordingly.

Mr. FARBSTEIN. Mr. Speaker, I vigorously oppose the administration's recommended cut of $13,750,000 for harbor projects. The impact of this cut would be unproportionately heavy on the New York and New Jersey port systems. Thirty-nine percent of the total or $5,400,000 would have to be absorbed by New York and New Jersey ports. The two most directly affected projects would be the Newark Bay channel project, and the New York deep water area anchorage project, which deeply affects the residents of my congressional district. The latter project would increase the depth of the water anchorages off of Brooklyn from the present depth of 30 feet to approximately 40 feet. This will enable sea-going oil tankers to await movement to port and be processed by customs officials in the proximity of the harbor. Since oil is the largest commodity being brought into New York, the need for this dredging to enable tankers with their full loads to actually dock is economically important. Otherwise, tankers will remain out to sea and have to lighten their loads before coming into the shallower water near the docks. This process is expensive, slow and inefficient.

The need for this project was established by a Corps of Engineers' study which led to the 1966 passage of expenditures totaling $2,900,000.

The 1970 budget would cut this sum to a token $500,000 while present economic conditions would require $3,500,000 to accomplish its original goals.

Here we see the emasculation of a project whose economic benefits will far outdistance the initial expenditure in the name of balancing the budget. I feel, as Congress and the President felt in 1966, that this project merits completion and I urge the chairman of the Public Works Appropriation Subcommittee, the distinguished gentleman from Ohio (Mr. KIRWAN) and the members of his subcommittee to restore the full amount necessary to successfully complete this project.

Mr. GALLAGHER. Mr. Speaker, I rise first to thank my good friend and colleague, the distinguished gentleman from New Jersey, for reserving this time period for a full discussion of the Newark Bay channel-widening project. This is a subject which vitally concerns the people of New Jersey and which vitally affects the entire Nation.

Mr. Speaker, it is no mistake that Newark Bay has come to be known as the Time Square of the maritime world. Like that famous street, Newark Bay is seriously overcrowded, overused, and overburdened by the tremendous flow of traffic which passes through it. It does not require an expert on marine traffic to comprehend the intolerable dangers to life and property in a situation where a narrow harbor entertains most of the marine traffic on the eastern seaboard. However, in the event that statistics are desired, let us consider the example of two ships passing in the channel, one a 90-foot-wide United States Lines container ship and the other a 102-foot-wide oil tanker; with four 25-foot-wide tugboats accompanying the vessels, more than 292 feet of the 400-foot-wide channel is utilized. In other words, there is only 100 feet of maneuvering area for these two giant ships. Only 100 feet in which two giant ships must safely pass.

Unfortunately, this example is not the product of a sadist's vision. It is fully representative of the typical, minute-by-minute activity in the Newark Bay Channel. It is an example which helps explain the reason why 33 men lost their lives in 1966 when the Texaco tanker *Massachusetts* and the tanker *Alva Cape* collided in Newark Bay. Thirty-three men dead for absolutely no justifiable cause.

What is perhaps sadder, indeed more tragic than the very loss of 33 lives in the *Alva Cape-Texaco* incident is that the entire disaster could easily have been averted. For more than 7 years prior to the fateful meeting of the two tankers, the Port of New York Authority had been petitioning the Federal Government for funds to widen and deepen the Newark Bay channel. But the petitions went unanswered. And the channel stayed too narrow. And the ships collided.

Mr. Speaker, for the past years I have been offering amendments to the budget to include sums for the Newark Bay project. Together with the diligent men of the Port of New York Authority, I have pointed out the dire need to begin construction of the channel facility. For the past two fiscal years, these amendments have been successful; this Congress appropriated money to start the project. Yet, strangely enough, not one dime of this monetary appropriation has ever reached the Port of New York for commencement of the project.

Nevertheless, we all had new hope last year that the situation would be remedied. Former President Johnson sent up a budget request which included $3.5 million for the Newark Bay channel widening; although this figure equaled only one-fifth of the estimated cost of completion, it represented a major step forward—indeed, it was a figure which would have permitted the project to begin.

The hope generated by former President Johnson's request was shortlived. The new administration trimmed the funding request for Newark Bay to a mere $500,000, not even enough money to enable a contract to be put out on the project. Even worse, under the guidelines issued by the Bureau of the Budget, it was ordered that no new construction on any projects begin this year. This means that even if money were found for the Newark project, construction would still be postponed because of the Bureau of the Budget guidelines.

Mr. Speaker, the problem at Newark Bay is far from new. We have there an old and dangerous situation. We are courting disaster in the Newark Bay channel every day that we fail to com-

mence its widening. We are literally asking for another marine disaster, with a staggering loss of life and property, every minute that we delay funding of the project.

I am well aware of the current fiscal crisis in our Nation; I fully understand the need to curb inflation and to hold the line on nonessential Government expenditures. This is good economics. But it is false economy to cut funds from absolutely essential projects; it is false economy, indeed, to cut funds from projects which are in themselves new sources of income, ratables, and jobs. Newark Bay is such a project on both counts: it is vital and it is an income producer. With its existing disadvantages, the New York-New Jersey Harbor still generated over $940 million in customs revenues in 1968, a sum equivalent to one-third of all customs revenues.

If economic considerations are used to justify the slash in Newark Bay funds, these considerations are not only misguided, but are highly dubious in actual application. Let me be perfectly clear on this point. The administration's revised budget reduces the total "Construction, general" sum in the Army Corps of Engineers' civil works program for fiscal year 1970 from $769,420,000 to $627,055,000, or a total reduction of only 19 percent. This point must be emphasized: the total reduction amounts to 19 percent. Now, in an astonishing contrast, the reduction in the Newark Bay channel project constitutes an 86-percent slash. Eighty-six percent cut from one project when the total line cut in the budget is only 19 percent.

Is it possible that these figures do not speak for themselves? Is it possible that one could fail to see the poor treatment accorded the Newark Bay project in this revised budget? Mr. Speaker, this is a project which has been awaiting funding since 1959; and we now come in with a revised budget request that lops more funds from this vital project than it does from any other single major construction proposal on the line.

If there is an economic philosophy at work here, I fail to see it. I would like to have it explained to me, because I fail to understand why a project which has been argued, debated, and proposed since 1959 now suffers an 86-percent slash. I cannot perceive the economic theory behind a near fatal blow to a project which affects commerce throughout the eastern seaboard and which, in turn, affects commerce throughout the United States.

There would be rather small justification for the Newark Bay cut if this were a brandnew project; but there is no justification for the cut considering that this project has been authorized for funding since fiscal 1968. The Congress has recognized the need to widen and deepen Newark Bay; the Congress has made its intention clear that the construction begin. Such legislative intent may not easily be dismissed in the name of economy—especially when true economic considerations militate in favor of beginning the project. It is not economy to cut what is essential for that which seems expedient.

Mr. Speaker, I do not ask or suggest today that money be cropped from other projects in order to fund Newark Bay. The sad state of port facilities in the United States makes it imperative that most, if not all, the marine projects on the Army Corps' agenda be completed. But the money for Newark Bay is available; all I ask is that the Newark Bay project receive its fair share, its fair share in proportion to the burden it carries. We have tremendous marine traffic in the Newark Bay channel today; this traffic will suffer a bounding increase in the coming years which will make the currently intolerable situation a navigational nightmare. It is merely a question of time before captains refuse to sail their tankers and container ships through the narrow confines of Newark Bay; and none could fault a captain for making such a decision.

We have developed a maritime obstacle course in the Newark Bay channel. It is as if we proffered a challenge to ships to try and enter the port without damage to their equipment and their crews. This is a deadly game of marine roulette in which there are no victors.

Mr. Speaker, I have given testimony to the Appropriations Committee urging that the cut funds be restored to the Newark Bay project. I am hopeful that the distinguished members of the committee will recommend such a restoration. Then, it will be the responsibility of this and the other body to pass the complete appropriations request in this area and make it possible for the channel widening project to begin.

We are all fortunate to have such dedicated men at the New York Port of Authority who have struggled so diligently over the years for this project. The Federal Government, however, should not have required that these men make request after request for the funds. Given the situation at Newark Bay and the manner in which it affects the entire Nation, the Federal Government on its own should have insisted that the widening project begin. The Federal Government should have made the commitment. Mr. Speaker, I believe this Government did make the necessary commitment when former President Johnson sent in the $3.5 million request for Newark Bay. We must honor that commitment and restore the cut funds.

Let us be loud and clear this time so there is no mistaking our sense of urgency about this project and our total dedication to safety in our harbors. Let us indicate to all people that we will not pay homage to false economy at the expense of reason, and perhaps life itself.

The Newark Bay channel project has been waiting too long. If the aggravated congestion there results in yet another maritime disaster, the specter of negligence will haunt this Government for all time.

Mr. Speaker, I urge the distinguished Members of this body to join together in restoring the $3 mililon in cut funds to Newark Bay. As we consider ourselves the greatest commercial nation in the world, let us provide port facilities commensurate with that lofty position.

I thank the gentlemen for their consideration.

Mr. BIAGGI. Mr. Speaker, I rise in vigorous protest to the administration's proposals directed upon the Port of New York through indiscriminate budget cuts in the Army civil works program for fiscal year 1970.

The New York-New Jersey port areas' budget has been slashed in the amount of $142,365,000—which is a mighty large slice. Eight of the 17 seaport projects have escaped the butcher's cleaver.

One of the remaining nine projects had only $1 million cut from their funds in the original budget for fiscal year 1970. Reductions in varying degrees are the recommended cuts in the funding of the other seaport projects. But the two Port of New York projects are the recipients of the 39 percent of the total cutback in funds. There is no doubt in my mind that the New York-New Jersey ports are being handed highly inequitable consideration—without justification.

I firmly believe that the President may realize—before it is too late—the tremendous service which the Port of the New York can provide to the Nation with the proper amount of Federal assistance. Hopefully, the funds will be restored to the full amount of $769,420,000. Anything less would prevent these two vitally necessary projects from providing the safe and effectual handling of the large tankers and movement of container ships and other large vessels which utilize the Newark Bay and New York Harbor.

Mr. SCHEUER. Mr. Speaker, I rise today to join Congressman DANIELS in expressing concern over administration fund cuts for the Port of New York. The proposed budget of the Army civil works program for the fiscal year 1970 has been reduced by 19 percent. This cut most severely affects the New York-New Jersey port area.

I fail to understand why the large and successful Port of New York, which serves not only our country but also foreign shipping and commerce, has been subjected to a blatantly discriminatory reduction of 36 percent while many other ports retain their original appropriations untouched.

The administration should restore the funds to the Port of New York to insure its health and stability which is essential to the vitality of our international trade.

GENERAL LEAVE TO EXTEND

Mr. DANIELS of New Jersey. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to extend their remarks on the subject of my special order.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

ON THE FIRST AMENDMENT TO THE CONSTITUTION

The SPEAKER pro tempore (Mr. PATTEN). Under previous order of the House, the gentleman from California (Mr. BROWN) is recognized for 60 minutes.

Mr. BROWN of California. Mr. Speaker, the first amendment to the U.S. Constitution, if I recall it correctly, says that the Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise

thereof, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

For the past six Wednesdays at noon a small group of U.S. citizens have assembled on the Capitol steps peaceably and have petitioned the Government for a redress of grievances.

On five of those weekly occasions all of the members of that group were arrested by the Capitol Police. On the sixth Wednesday, which was today, at 12 o'clock noon, they were permitted to exercise their constitutional right without being arrested.

Mr. Speaker, I want to take a few minutes this afternoon to put in the RECORD documents and other materials which relate to this little episode in the history of the Capitol, and to make a few remarks pertinent thereto.

I want to say first that the American citizens who had appeared here on the Capitol steps for six successive Wednesdays were not arrested today because the presiding judge of the District of Columbia Court of General Sessions, Judge Harold Greene, last Thursday handed down an opinion which resulted in the dismissal of all the charges against these citizens on last Friday. I think Judge Greene should be highly commended for the decision which he handed down. He acted in accordance with the highest traditions of the judicial system in dealing with a case which, to some, at least, may have appeared quite complicated. In handing down a decision based upon first amendment issues in the form that he did he acted in a fashion which generally is reserved to much higher courts.

Judge Greene, in examining the charges against these citizens, reviewed the issues at considerable length. On the first occasion in which arrests were made the police acted under a section of the District of Columbia Code known as the Illegal Assembly Section. The court before which those arrested appeared ruled in that case almost immediately that the charges were vague and ambiguous, and dismissed them. On the second and succeeding occasions, another section of the code was used, the one generally known as the Illegal Entry Section. Some people might wonder how persons peacefully assembled in a public place could be accused of illegal entry, and the judge discussed this at some length.

He points out that there are cases in which it is possible to prohibit the entry of the public from public grounds, and he states the reasons and the kinds of circumstances under which this can be so. He then says:

> There are other types of government land, public parks, streets and sidewalks and historic landmarks, which may not ordinarily be closed to the public for reasonable use. The Capitol of the United States, a national historic shrine, and the political centerpiece of the nation, is in the latter category. It may not be declared off limits to the public. Indeed, the Congress invites and welcomes the public.

He went on to say that individual citizens could not be held to be without lawful authority to remain thereon within the meaning of the unlawful entry statute in the absence of some other specific bar to their presence. He said:

> That bar could not legally be an order by the chief of the Capitol Police issued on his own authority.
>
> He can order the ejection only of those who have no legal right to be there.

The judge went on to point out that many groups assemble on the Capitol steps under many different circumstances and that there are no rules which can be used to judge which groups are there properly and legally and which are not.

This fact was testified to by several witnesses including the chief of police himself who further testified that the general standard used, and it is one of long standing with considerable precedent, has to do with the controversiality of the groups. The judge deals at considerable length with this standard of controversiality.

He says:

> The standard of noncontroversiality is impossible of even-handed, impartial and constitutional application.

He goes on to say further that under our constitutional system, no public official—executive, legislative or judicial—can have the power to permit or prohibit assembly on property belonging to the people based on his notion of what stand on public issues may be controversial.

In short, he says, for several reasons the controversiality standard employed by Chief Powell is not compatible with constitutional values and principle.

He says further:

> Absent compelling circumstances, members of the public may not be excluded from public areas because of their purpose to use these areas for exercise of First Amendment rights. The streets and parks have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thought between citizens, and discussion of public questions. That use may be regulated, but it must not in the guise of regulation, be abridged or denied.

Then he says in a further paragraph which impresses me very greatly, and which I commend to the attention of all Members of the House:

> In this day of the violent confrontation, the harsh non-negotiable demand, the disregard of the most elementary forms of civilized discourse, it is especially important that peaceful speech and courteous persuasion be given their rightful chance. It would be strange, indeed, if our constitutional system, and especially the First Amendment, were to countenance the congregation on the grounds occupied by the national legislature of all manner of groups except those who wish to speak out peacefully on the controversial issues of the day. That is not the mark set by the Bill of Rights.
>
> It is presumably for that reason that Mr. Justice Stewart, speaking for a near unanimous Supreme Court, held in the controlling case of Edwards versus South Carolina, that nonviolent demonstrations on the grounds of the South Carolina State Capital were constitutionally protected from interference, and reversed breaches of the peace convictions of 187 Negroes protesting there against alleged discrimination.

I shall put in the RECORD the full text of this opinion because I think it bears reading by every Member of the House.

I recognize there are some, perhaps many, in this House, who will disagree with the logic and the thrust and the conclusion of Judge Greene's opinion. I am not here to extoll its merits because I agree with it, or to criticize those who may disagree with it. I am here primarily to ask all of us, including myself, to be more sensitive about the way in which we use our authority as Members of the Congress of the United States in dealing with the fundamental rights of American citizens.

The Constitution protects all of us. It protects those with whom we agree as well as those with whom we disagree. And it is all too easy, as we have seen on many, many occasions throughout this land, to feel that we should use the laws, we should use the powers which we have as members of legislatures, or as members of police forces, to suppress that which makes us uncomfortable and to permit that which is noncontroversial. As Judge Greene says, this is not the standard set by the Constitution. I do not think we need to be reminded that the Constitution of the United States was written at a time of crisis and controversy. It has written into it specific guarantees for the protection of controversy, for the protection of those who are unpopular, for the protection of minorities.

And we have a special duty in these times when our country is sorely divided to make sure that these protections apply to everyone regardless of their views. The important thing which the judge considered here was whether this was a peaceable assembly. If it is a peaceable assembly it is protected. If it is not peaceable, of course, then it is not protected, and I would be the first to seek reasonable regulations under which we could all be assured that an assembly was peaceable.

Let me say a word also about the Capitol Police in this situation, I know it is all too easy to engage in condemnation of the police in these times. In this particular situation I have nothing but praise for Chief Powell and his officers, and the way in which they carried out the duties required of them. Chief Powell was not, in my opinion, acting on his own arbitrary initiative. He was acting in accordance with precedents and instructions which he has been called upon to carry out for a considerable period of time. I do not think he liked what he had to do, and yet he carried out the job with a minimum of disruption, a minimum of difficulty, with the greatest of courtesy and consideration for the citizens he felt he was required to arrest.

So I think it is right and proper to give recognition and credit to the chief for the way in which he carried out this job.

It is, of course, very easy for people who are entrusted with the enforcement of the law, for the arrest and incarceration of those who may be violating the law, to lose their sensitivity to human values and to feel that they are always right in whatever they may do. I think the House can be proud of the fact that Chief Powell is not one of that type, and that given adequate instruction, precise instruction, and a firm legal basis on which to act, he will continue to carry out in the very highest fashion the enforcement of the law in accordance with the Constitution and in accordance with the needs of the Members of Congress

for protection from disruption of their activities.

I would like to point out that today this country is greatly divided. There are deep divisions among our citizens with regard to many important issues facing this country.

It is at times like these that it is particularly difficult for law enforcement officers to carry out their duties. There are many questions with regard to the fundamental assumptions upon which our Government acts. There are questions as to the values of the society.

There are some who feel that, instead of being a humane society, dedicated to freedom and human welfare, we have become a society obsessed with the exercise of power, with the accumulation of material goods, and with the establishment of these objectives—power and property—as of higher priority than the rights and welfare of human beings.

It is truly tragic when these divisions occur on the scale which they are occurring in this country today. In my view we are not likely to pass quickly over this time, we are not likely to get back quickly to the tranquility which we all seek, which is based upon large measure of agreement of the citizens of this country with regard to the goals we are seeking to achieve as a country. There is no such agreement today.

I do not wish in these few brief moments this afternoon to continue to belabor this point. I have here a set of documents which amply explains the entire history of these incidents on the Capitol steps, which explains to some degree my reasoning and the reasoning of other Members of Congress who took an interest in these events.

(Mr. BROWN of California asked and was given permission to revise and extend his remarks and include extraneous material relating to the subject matter of his special order.)

BACKGROUND CHRONOLOGY: A QUAKER ACTION GROUP DEMONSTRATION ON EAST FRONT STEPS OF CAPITOL MAY–JUNE 1969

Mr. BROWN of California. Mr. Speaker, this spring the Philadelphia-based "A Quaker Action Group" decided to emphasize its resistance to this country's policies in Southeast Asia, and the vehicle chosen for this demonstration was to be a reading of the names of American war dead upon the steps of the Capitol Building. The following pamphlets describe the initial plans:

A CALL TO THE LIVING FOR A ROLLCALL OF THE DEAD IN WASHINGTON, MAY 23–29, 1969

MAY ACTION

In April there was a renewal of resistance to the Vietnam war. Demonstrations in 42 cities all across the country revealed, once again, to government officials that millions are opposed to the war. But, the suffering and slaughter continues. The Administration and Pentagon still have the same policy of maintaining the Thieu-Ky dictatorship by 500,000 U.S. conscripts. They still have the same policy of deceiving the American people.

It is an unnecessary war. It is an illegal war. It is an immoral war. It is poisoning the life of mankind all over the globe. It must be ended.

In May we must escalate resistance. Our resistance must speak loud and clear in Washington and all over the country.

35,000 U.S. military personnel have been killed in the Vietnam war. The slaughtered Vietnamese are many fold that number.

On May 23–29 we intend to read the names of Americans killed in Vietnam—at the White House, Capitol, Pentagon, State Department—in the street and in offices. Our reading is in mourning for Americans killed in a tragic and immoral war and in penance for the deaths of countless Vietnamese whose names are known only to suffering family and friends.

SPEAK LOUD AND CLEAR

Congressman Paul Findley placed the names of the U.S. war dead in the Congressional Record on March 25, 1969. On that occasion he said: "If the premise is accepted—as I believe it must—that our military policies have been based on false assumptions all along, then the best way to honor the war dead is to take steps to assure that the casualty list stops growing—In my view, these names should be called to the attention of the administration and the American people because they establish as no other arrangement of words can possibly do the true dimensions of the Vietnam war in total overall terms as well as the most intimate."

The officials of Washington may not allow the reading of the names of the dead on the streets and in public buildings. In Washington, as elsewhere, there is a general move to curb dissent and war resistance. We trust an increasing number of people are prepared to suffer arrest that free speech and resistance to the Vietnam war may be maintained and intensified.

RESIST WHERE YOU ARE

Not everyone can or should come to Washington. Read the names of the war dead at local draft boards or induction centers. Read the names at the entrance to a military installation or in the public square. In some cities the Women's International League for Peace and Freedom and other organizations will be reading the names of war dead in their own city.

THE SPIRIT OF OUR RESISTANCE

May Action will be undertaken in the spirit of nonviolence and openness. It is open to all who share our purpose and method. The project may at many points involve civil disobedience against attempted curtailment of civil liberties and in resistance against the Vietnam war. Persons beyond draft age are particularly invited to share the suffering of young men who are resisting conscription.

We are committed to interdependence of the human family. World community is our purpose: nonviolent direct action and civil disobedience against acts of war and oppression is our method. It was in that constructive program of world community building that we sailed the *Phoenix* to both North and South Vietnam with medical supplies; demonstrated in Warsaw Pact countries against the invasion of Czechoslovakia; and held a vigil in the Panama Canal Zone at Fort Gulick. In the U.S. we have resisted conscription and taxes for war; and walked with the oppressed in the Poor People's Campaign.

ORDER OF EVENTS

Friday, May 23, 9:00 a.m.: Orientation and planning session at Friends Meeting House, 2111 Florida Ave., N.W., Washington, D.C.; 12:00 a.m.: Reading of names of war dead at the Capitol, the White House, State Department, and the Pentagon. (We are trying to secure names of Vietnamese dead also.) At some place we will read the whole list of 35,000 which takes about 20 hours.

Saturday, May 24: The reading of the names of the war dead in public places all over Washington.

Sunday, May 25: Meeting For Worship and workshops for a sustained effort the following week.

Monday through Thursday, May 26–29: Reading of the names (or portion of the list) of the war dead in offices of Congressmen, Senators, Administration officials. (Other nonviolent actions may be undertaken during that week as determined by A Quaker Action Group and other participants.)

LET US SPEAK TRUTH

Let us speak truth to the people of the United States about the war in Vietnam.

Let us speak truth to power.

Let us persist in speaking truth where people are unwilling to hear the truth.

WHY WE MUST SPEAK TRUTH

We must speak truth because far too many human beings have suffered and died in Vietnam, for far too long.

We must speak truth because our government is still talking rather than acting to end this suffering.

We must speak truth because our government lacks not the means but the *will* to end this war.

HOW WE WILL SPEAK

We will read the names of 35,000 Americans killed in Vietnam, at such places as the Capitol, the White House and the Pentagon.

We will speak regardless of penalties which we may suffer, such as imprisonment.

We are willing to accept arrest and jail. We hope that our action will speak to our fellow citizens to open their eyes to the truth about Vietnam, and to give our government the will and the courage to end this war.

WHAT WE ARE ASKING

We ask immediate U.S. military withdrawal from Vietnam.

We ask self-determination for the Vietnamese people.

We ask others to stand up and speak the truth about Vietnam.

WHAT WE STAND FOR

We stand for openness and truth.

We follow the way of non-violence because we are deeply convinced that violence cannot be overcome by more violence.

We believe in a world community of all mankind and want to use our talents and resources for that purpose.

Speak with us.

A QUAKER ACTION GROUP

A Quaker Action Group was organized in July, 1966 to engage in nonviolent action for peace and justice. We sponsored voyages of the Phoenix to North and South Vietnam for relief of suffering and as a protest against the inhumanity of the Vietnam war. We have participated in the Poor People's Campaign, organized a vigil at Fort Gulick in the Panama Canal Zone, protesting U.S. military policy in Latin America. We have worked for the community of mankind which transcends armed national states.

(NOTE: A White Paper on the Vietnam war has been prepared by the American Friends Service Committee. We commend it as the best short statement of truth about the Vietnam war.)

Mr. Speaker, the initial attempt to read the names came on May 23, and Capitol Police arrested the group of 10 who continued down the list of war dead after they were told by police that they would be jailed if they persisted. Five days later, on Wednesday, May 28, another group of 11 persons started from the point at which the first group had left off; they, too, were arrested.

On both days, demonstrators acted peacefully and did not resist arrest. Threat of continued arrest did not halt prospects of further demonstrations, as shown by the following leaflet printed by A Quaker Action Group:

WE MUST CONTINUE

At noon on Friday, May 23rd, 10 people began reading the names of American soldiers killed in Vietnam on the east steps of the Capitol building. They did this in a spirit

of mourning for those who have died, both Vietnamese and American, and to bring home to the American people the continuing horror of this senseless and inhuman war. They were arrested. On Wednesday, May 28th, 11 others took their place and continued the reading. They also were arrested.

We must continue. On Wednesday, June 4th, and on each succeeding Wednesday, the reading of the names will continue. We must continue to point out the true dimensions of this war; we must continue to point out that over 1,000,000 Vietnamese and 37,000 Americans have died; we must continue to point out that the peace talks in Paris are a tragic farce and that the war has continued to escalate despite the talks. We must, and we will, continue.

Join with us in Washington. There is no longer time for silence even when speaking out means arrest. The suffering of arrest is insignificant when compared to the suffering the Vietnamese have endured and must continue to endure until this war, our war, is brought to an end.

Join us as we speak the truth at the Capitol, in the jails and in the courts. Meet us at 515 East Capitol St., Washington, 9 AM every Wednesday. (Tel. 544-9259). Overnight housing available.

Sponsored by A Quaker Action Group.

Two days before the second arrests, Lawrence Scott, executive secretary of A Quaker Action Group, wrote the following letter to Police Chief James M. Powell:

A QUAKER ACTION GROUP,
Philadelphia, Pa., May 26, 1969.

JAMES M. POWELL,
Chief of Capitol Police,
The Capitol,
Washington, D.C.

DEAR CHIEF POWELL: We in A Quaker Action Group regret very much causing you repeated difficulties. You have impressed us as being a law enforcement officer of high integrity. I believe in the need of democratic government with just and equitable laws as a condition of human community. Yet, I also believe that the armed national state with its power struggles and war as an instrument of foreign policy has become the primary violator of human community. Therefore, laws and policies of armed national states which perpetuate violent attacks against world community must be resisted and disobeyed as a duty to mankind and as allegiance to God the Creator.

As I indicated to you when you arrested ten of us on the Capitol steps on Friday, May 23, I shall make every endeavor not to infringe upon the rights of others.

There is much precedent for our actions in history. The Temple in Jeruselem was the seat of both religious and secular authority for the Jewish people. Jesus opposed the corrupt and venal power of the Temple officials by overturning the tables of the money changers, and speaking plainly to the officials of his nation. A few weeks after Jesus was crucified his followers assembled on the portico of the Temple (a situation similar to assembling on the steps of our Capitol) and spoke of why Jesus was crucified by the Jewish authorities. Some were arrested and imprisoned. Their answer to the Jewish authorities was "Whether it is right in the sight of God to listen to you rather than to God, you must judge, for we cannot but speak of what we have seen and heard."

In 17th Century England the Quakers not only refused to abide by the prohibition against open worship; but refused to give undemocratic deference to class disinctions and to those in authority representing that immoral requirement. When their Meeting Houses were burned they worshiped openly alongside the ashes. When many of the adults were in prison the children carried on the open defiance by worshiping and speaking openly. Quaker colonists to America contributed greatly to freedom and democracy as expressed in our State and Federal constitutions. (When I was in Mississippi coordinating the rebuilding of burned churches in 1964-65 I worshiped with black rural congregations who defied the tyranny of our day by worshiping and speaking freely alongside the ashes of their church.)

The present Nixon policy with reference to Vietnam seems to be one of buying time by allaying citizen opposition to the war. But what is he buying time for? He is buying time so that by ruthless bombing, use of anti-personnel pellet bombs, napalm, crop killers, poison gas and every other barbarous means he can force the Thieu-Ky dictatorship on the Vietnamese people. That regime has imprisoned and tortured even meek Buddhists who have spoken for peace and neutrality. It has denied freedom of press and other liberties. It is a government made up of landlords and corrupt generals who fought with the French colonizers. That is what time is being bought for and why our government continues to slaughter the population of Vietnam and our own American young men.

We shall continue to speak openly in Capitol porticoes and other public places against this inhuman Vietnam war. If you imprison those of us who act in open nonviolence it is our faith that others will take our place in an upsurge of dissent and sanity.

My friendly regards to you and all other representatives in the United States Government.

Sincerely,

LAWRENCE SCOTT.

A Quaker Action Group vowed to keep attempting to read the war dead names—as long as the war continued, and on June 3, a representative of the group visited my offices. I agreed with the group that they should have the right to read the names, upon the steps and I sent the following letter, stating my position, to all Members of Congress—in both House and Senate:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., June 4, 1969.

DEAR COLLEAGUE: I have agreed to join with a few members of A Quaker Action Group today (June 4th) at 12 noon on the East steps of the Capitol to continue reading from the CONGRESSIONAL RECORD the names of those American soldiers killed in Vietnam, and bringing to the attention of the Congress this matter of great national importance.

On two previous occasions within the past few days members of this group have been arrested for doing this, and two of the group are currently in the D.C. jail.

I feel sure you will be interested in observing our efforts today.

Sincerely,

GEORGE E. BROWN, Jr.,
Member of Congress.

I also sent letters to the Speaker of the House, the Vice President, and Chief Powell, requesting that the group be allowed to read the list of war dead without fear of arrest:

JUNE 4, 1969.

Hon. JOHN W. MCCORMACK,
Speaker of the House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: I have agreed to join with a few members of A Quaker Action Group today (June 4th) at 12 Noon on the East steps of the Capitol to continue reading from the Congressional Record the names of those American soldiers killed in Vietnam, and bringing to the attention of the Congress this matter of great national importance.

On two previous occasions within the past few days members of this group have been arrested for doing this, and two of the group are currently in the D.C. jail.

I am respectfully requesting that you instruct the Capitol Police to not interfere with their efforts to read the rollcall of the Vietnam dead from the Congressional Record. I believe that they have an absolute Constitutional right to do what they are doing and that the arrests are unwarranted.

Thank you for your attention to this request.

Sincerely,

GEORGE E. BROWN, Jr.,
Member of Congress.

JUNE 4, 1969.

Hon. SPIRO T. AGNEW,
Vice President of the United States and President of the Senate, Washington, D.C.

DEAR MR. VICE PRESIDENT: I have agreed to join with a few members of A Quaker Action Group today (June 4th) at 12 Noon on the East steps of the Capitol to continue reading from the Congressional Record the names of those Americans killed in Vietnam, and bringing to the attention of the Congress this matter of great national importance.

On two previous occasions within the past few days members of this group have been arrested for doing this, and two of the group are currently in the D.C. jail.

I am respectfully requesting that you instruct the Capitol Police to not interfere with their efforts to read the roll call of the Vietnam dead from the Congressional Record. I believe that they have an absolute Constitutional right to do what they are doing and that the arrests are unwarranted.

Thank you for your attention to this request.

Sincerely,

GEORGE E. BROWN, Jr.,
Member of Congress.

JUNE 4, 1969.

Hon. JAMES M. POWELL,
Chief, U.S. Capitol Police, Washington, D.C.

DEAR CHIEF POWELL: I have agreed to join with a few members of A Quaker Action Group today (June 4th) at 12 Noon on the East steps of the Capitol to continue reading from the Congressional Record the names of those American soldiers killed in Vietnam, and bringing to the attention of the Congress this matter of great national importance.

On two previous occasions within the past few days members of this group have been arrested for doing this, and two of the group are currently in the D.C. jail.

I am respectfully requesting that you not interfere with their efforts to read the rollcall of the Vietnam dead from the Congressional Record. I believe that they have an absolute Constitutional right to do what they are doing and that the arrests are unwarranted.

Thank you for your attention to his request.

Sincerely,

GEORGE E. BROWN, Jr.,
Member of Congress.

At noon on June 4, two other Members, Mr. KOCH and Mr. DIGGS, and I met with the representatives of A Quaker Action Group on the east front steps of the Capitol, and all three of us participated in reading from the list of war dead. At that time, I made the following statement:

STATEMENT OF HON. GEORGE E. BROWN, JR.,
JUNE 4, 1969

I am joining A Quaker Action Group on the Capitol steps today because I share their concern, and I believe that they have an absolute Constitutional right to do what they are doing. I have asked the Speaker of

the House and the President of the Senate to instruct the Capitol Police not to interfere with the group's efforts to read the roll-call of the Vietnam dead from the Congressional Record. I have advised the police that I feel the arrests are unwarranted.

I am in wholehearted agreement with the group's feeling that the Vietnam war is an unnecessary, illegal and immoral war that must be ended. It is a tragic error perpetuated by a stubborn and arrogant bureaucracy.

Over the past five years I have stated many times that I believe there is no chance of a military victory and the 35,000 names of these young Americans who have died bear irrefutable witness to the monstrous cost of this monumental mistake in our foreign policy.

The new Administration is not moving toward peace any faster than the previous Administration. The opportunity to admit past mistakes, with humility, is being lost and the perpetuation of old policies is rapidly making them the new policies, as well—which President Nixon's Administration will be forced to defend.

If we recognize, admit and move to rectify our past mistakes, it would follow that we would have no reason to illegally suppress the efforts of this group. Therefore, I cannot sit idly by and be a party to this suppression by ignoring the arrest and imprisonment of sincere, patriotic and concerned Americans whose only crime is to remind us of the hideous side of the war which we too often tend to forget.

Again, the demonstrators were arrested. These news stories describe the situation:

[From the Washington (D.C.) Post, June 5, 1969]

CONGRESSMEN JOIN PROTEST AT CAPITOL

(By Claudia Levy)

Three Congressmen joined 13 members of A Quaker Action Group yesterday on the east steps of the Capitol to read the names of Vietnam war dead. The Quakers were arrested but the Congressmen weren't.

Reps. George Brown (D-Calif.) and Edward I. Koch (D-N.Y.) were left standing alone on the steps, despite their insistence that their congressional immunity to arrest be waived.

Rep. Charles Diggs Jr. (D-Mich.), who had also read from the listings of dead servicemen, had to leave moments before the arrests at 12:30 p.m. to attend a Michigan delegation caucus.

"These are my guests," Brown told Capitol Police Chief James W. Powell. "They have constitutional rights as citizens to be here."

Powell said while the demonstrators were free to visit with any member of Congress, they could not assemble on the steps to petition.

"Since when is it illegal for this small group to come here and grieve over this matter?" asked David Richards, 25, of Chester, Pa.

"If you think this group is breaching the peace," Brown said, "then I waive my congressional immunity and ask to be arrested." Members of Congress are subject to arrest only on charges of treason, felony or breach of the peace when Congress is in session.

"Do to me what you'd do to any citizen," Koch told Powell. "They're not violating any rules, but their constitutional rights are being violated by you and your men."

Police, who had cleared the steps of spectators, began leading off the demonstrators.

"Well," Brown said to Koch, "let us continue reading."

As they attempted to speak, police began pushing a crowd of 100 newsmen, tourists and sympathizers across the roadway directly below the steps, ordering them to move on.

Brief scuffling erupted but there were no other incidents.

Powell said the Congressmen would not be arrested because there was "insufficient breach of the peace in their case."

The 13 demonstrators, the third such delegation to appear at the Capitol this year, were charged with illegal entry. They included Joan Nicholson, 35, of Philadelphia, one of two persons who finished serving eight-day sentences at 8 a.m. yesterday for a Capitol demonstration last week.

Also arrested yesterday were Richards; Bob Tatman, 22, of Wynnewood, Pa.; Harriet Barlow, 27, 3708 Drummond st. Chevy Chase; Michael Panella, 23, of Media, Pa.; David Kelly, 18; L. A. Ford, 20, Terry Buckalow, 28 and Jim Hart, 27, all of Philadelphia; Boykin Reynolds, 21, 4701 Connecticut ave. nw.; Jan Green, 42, Lincoln, Va.; Betty van Huyack, 34, 2773 N. Wakefield st., Arlington and David R. Hartsough, 28, 1332 A st. se.

The 13 appeared before Judge Alfred Burka in the Court of General Sessions yesterday. Tatman, Richards and Panella pleaded no contest and were given suspended sentences with one-year unsupervised probation. The others were released on personal bond pending trial.

[From the San Jose (Calif.) Mercury, June 5, 1969]

THREE DEMOS JOIN QUAKER PROTEST

(By Baxter Omohundro)

WASHINGTON.—A California congressman and the Capitol police were eyeball-to-eyeball Wednesday, and the lawmen finally blinked.

Rep. George Brown (D-Monterey Park) challenged police to arrest him as they moved into jail 13 Quakers who had gathered on the Capitol steps to quietly protest the war in Vietnam.

Brown and two other House Democrats, Edward I. Koch of New York and Charles Diggs of Michigan, joined with the protesters, but only Brown specifically waived his congressional immunity after the group was warned that arrest was imminent.

But Capitol Police Chief James M. Powell refused to take him or his colleagues into custody as a score of his officers escorted the Quakers to awaiting paddy wagons.

Brown, an announced Senate candidate, earlier had read Constitutional provisions on the rights of assembly, free speech and free press plus congressional immunity from arrest for crimes other than "treason, felony or breach of peace" and said he was waiving his immunity.

Powell, whose men booked the Quakers for unlawful entry under an act of the last Congress, said he didn't consider the demonstration a breach of the peace sufficient to warrant arresting the congressmen.

The congressmen and the Quakers, taking part in the third such demonstration sponsored by the Quaker Action Group of Philadelphia, took turns reading from a list of U.S. war dead published in the Congressional Record on March 25.

After clearing the steps of newsmen and noon-hour spectators, Powell, speaking through a bullhorn, repeatedly warned the seated demonstrators to leave. He set a deadline of 12:30 p.m., a half hour after the protest began, then signalled the arrests to begin. Brown and Koch took up reading the list as the unresisting Quakers were escorted away.

Although the arrests were peaceful, police later shouted and shoved at spectators and newsmen who had gathered to talk to Brown and Koch. Diggs had left before the arrests began.

"Throw them into the streets," ordered Police Capt. Leonard Ballard when the group failed to promptly move from the driveway by the east front of the Capitol.

At one point, Koch angrily complained to police for shoving two young women in the group.

"Act like gentlemen, can't you," he said.

However, there were no further arrests as the group shuffled off by twos and threes in the warm sunshine.

Speeches by the congressmen and the protestors were generally applauded by about 100 spectators, many of them staffers from congressional offices, but one man called the Quakers "stooges for Communist world slavery."

Brown sent letters to all of his Democratic colleagues telling them of his intention to join the protestors. He said he also asked Senate and House leaders that the Capitol police be ordered not to arrest them.

The Californian said he plans to join the Quaker protests whenever they are held, and a spokesman for the group said others are planned in coming weeks.

The next day, June 5, I made the following remarks upon the floor of the House:

READING OF NAMES OF AMERICAN DEAD IN VIETNAM ON CAPITOL STEPS

(Mr. BROWN of California asked and was given permission to address the House for 1 minute, and to include extraneous material.)

Mr. BROWN of California. Mr. Speaker, yesterday at 12 noon, I and two of my colleagues joined 12 members of a Quaker action group on the steps of the Capitol in reading the names of the honored American dead in Vietnam from the Congressional Record. On Memorial Day, I had the honor of paying similar tribute to these brave men at ceremonies conducted by the American Legion post of my hometown of Monterey Park, Calif.

There was a difference in the two events. In my hometown, before an American Legion honor guard and representatives of every civic organization, I spoke of the ideals these men died to preserve, and the responsibility of the citizens, and their elected representatives, to insure that no American soldier died in a cause that was not just, did not protect freedom, did not promote the welfare of the oppressed people of the earth.

On the steps of the Capitol, speaking only the names of the American dead, I was confronted with a platoon of armed policemen who ordered a halt to the reading of the names, and when this illegal order was not obeyed, arrested the 12 members of the Quaker action group and took them to jail. My request to be arrested with them was refused.

I love my country just as much in Washington, D.C., as I do in Monterey Park, Calif. I honor the American men who have died in Vietnam just as much in Washington, D.C. as I do in Monterey Park. I make the same demands for an immediate end of the war while at home in Monterey Park as I do in these Chambers or on the steps of the Capitol. And I will continue to do so.

But in Washington, D.C., there seems to be more fear that these dead, sent to die by the action or failure to act, of the Members of this Body, will return to haunt our dreams.

If we sent these men to die in mistaken cause, as I believe we did, their deaths will not be absolved by sending even more to die with them. Their deaths will be absolved by rectifying the errors of past policy, by confessing that we sinned, and by choosing the path of righteousness in the future.

I urge this course on my colleagues.

I include herewith my own statement issued yesterday in connection with this event:

"STATEMENT OF HON. GEORGE E. BROWN, JR., JUNE 4, 1969

"I am joining A Quaker Action Group on the Capitol steps today because I share their concern, and I believe that they have an absolute Constitutional right to do what they are doing. I have asked the Speaker of the House and the President of the Senate to instruct the Capitol Police not to interfere with the group's efforts to read the roll call of the Vietnam dead from the Con-

gressional Record. I have advised the police that I feel the arrests are unwarranted.

"I am in wholehearted agreement with the group's feeling that the Vietnam war is an unnecessary, illegal and immoral war that must be ended. It is a tragic error perpetuated by a stubborn and arrogant bureaucracy.

"Over the past five years I have stated many times that I believe there is no chance of a military victory and the 35,000 names of these young Americans who had died bear irrefutable witness to the monstrous cost of this monumental mistake in our foreign policy.

"The new Administration is not moving toward peace any faster than the previous Administration. The opportunity to admit past mistakes, with humility, is being lost and the perpetuation of old policies is rapidly making them the new policies, as well—which President Nixon's Administration will be forced to defend.

"If we recognize, admit and move to rectify our past mistakes, it would follow that we would have no reason to illegally suppress the efforts of this group. Therefore, I cannot sit idly by and be a party to this suppression by ignoring the arrest and imprisonment of sincere, patriotic and concerned Americans whose only crime is to remind us of the hideous side of the war which we too often tend to forget."

On June 9, Lawrence Scott sent the following letter to all Members of Congress:

A QUAKER ACTION GROUP,
Philadelphia, Pa., June 9, 1969.

Senators and Representatives, U.S. Congress, Washington, D.C.

DEAR FRIEND: Three times during the past month small groups sponsored by A Quaker Action Group have been arrested on the east Capitol steps for holding a silent meeting for worship in which we read the names of the U.S. servicemen killed in Vietnam. By this action it was not our intention to disrupt the work of Congress, nor do we believe that has been the result. It was not our intention to infringe upon the rights of others, nor do we believe that has occurred.

The court cases resulting from the arrests have afforded an opportunity to re-affirm the rights of freedom of assembly and speech. That service is being carried forward by the American Civil Liberties Union. We are glad to be the occasion for, and to cooperate with, that purpose. Yet, our primary goal was not to test the constitutionality of the statutes which interfere with freedom of expression.

In our public witness on the steps of the Capitol it was not our intention to be arrested and suffer in jail. We are engaged in constructive work and professions and it is not easy to disrupt our life by jail sentences. Nor is it easy to suffer the indignities and cruelties of the Washington jails, even though it does give us some identification with what the poor and the black often suffer. However, we accept arrest and imprisonment as part of our witness if that is necessary.

It has been our primary goal by this expression of mourning and public witness on the Capitol steps to speak truth about the Vietnam war to the Congress and the American people. We want you to know our primary purpose, because we intend to pursue it persistently at the Capitol and other places in Washington by various means of nonviolent action as led by the Spirit. If that should result in disruption of the war-making activities of the United States Congress or Administration we would consider that a valid use for our lives and freedom.

We urge the Congress of the United States to use every means of power at its disposal to stop the slaughter and withdraw all American forces from Vietnam. We feel the Congress should reassert its responsibility for foreign policy and budgetary allocations. The "greatness of America" lies in vastly different means and ends than those proposed by President Nixon. It lies in a whole different dimension of freedom and world community.

We intend again on June 11, at 12 noon, to assemble peacefully on the east steps of the Capitol and resume the reading of the names of the young Americans who were sent to their deaths in Vietnam. At the same time we will mourn the Vietnamese killed by United States military might. We shall mourn for the Vietnamese and Americans maimed and crippled for life. We shall mourn for the Vietnamese and Americans suffering in prisons because of their dissent and resistance to war.

If you share our purpose of immediate United States military withdrawal from Vietnam and agree to a discipline of nonviolence in the witness on the Capitol steps and acceptance of arrest without resistance, if that should occur, we invite you to join us in worship and in reading the names of Americans killed in Vietnam as published in the Congressional Record.

In closing we wish to express our deep appreciation to those Senators and Congressmen who are working courageously to end the war in Vietnam.

Sincerely,

LAWRENCE SCOTT.

After the June 4 arrests, other Members of the House began to show interest in the right of A Quaker Action Group to read the list of war dead names. The following letter from three other Members, the gentlewoman from New York (Mrs. CHISHOLM), the gentleman from California (Mr. EDWARDS), and the gentleman from New York (Mr. KOCH), and myself was sent to all Members of Congress on June 9:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., June 9, 1969.

DEAR COLLEAGUE: Last Wednesday, June 4th, twelve members of A Quaker Action Group were arrested on the Capitol steps for reading from the Congressional Record the names of American soldiers killed in Vietnam. This arrest, the third in three weeks, was made despite the fact that the twelve were peaceably assembled and were joined by three members of Congress who read the names with them.

Chief Powell, of the Capitol Police, testifying on June 6th in the Court of General Sessions on a defense motion to dismiss the charges against those arrested, said that all other things being the same, he would have arrested even one person reading the names of the Vietnam war dead on the Capitol steps. Chief Powell indicated that he felt the Capitol Police Board (composed of the Architect and the two Sergeants-at-Arms), the Speaker, and the President of the Senate would direct him to take such action.

In our opinion, these arrests clearly deprive the arrested of their rights under the First Amendment of the Constitution. This issue will be resolved by judicial process.

We feel strongly that only by protecting the constitutional rights of those who engage in peaceful assembly and petition can we discourage those who are urging other tactics. We will, therefore, join members of A Quaker Action Group again on Wednesday (June 11th), at noon to continue reading from the Congressional Record the names of the Americans who have died in Vietnam.

The participation of other concerned Members is invited.

Sincerely,

GEORGE E. BROWN, Jr.,
SHIRLEY CHISHOLM,
DON EDWARDS,
EDWARD I. KOCH,
Members of Congress.

When demonstrators began to read from the list again on June 11, they were arrested by Capitol police. Four Members of Congress, Mr. KOCH, Mr. MIKVA, Mr. JACOBS, and I, also read from the roll of war dead.

However, on June 11, a new approach to the readings was attempted. A representative of A Quaker Action Group presented a petition to me, a peaceful petition of redress of grievance as noted in article I of the Bill of Rights. I accepted their petition and instructed them to continue reading the war dead names as a part of the petition. The following newsstory reports what happened:

[From the Post Advocate, June 11, 1969]

GEORGE BROWN AGAIN JOINS QUAKERS IN ANTI-WAR PROTEST

WASHINGTON.—Rep. George D. Brown, Jr., D-Monterey Park, today participated in a second anti-war demonstration with a group of Quakers on the steps of the Capitol. Three other congressmen took part in the demonstration.

Twenty members of the Quaker Action Group, who were reading aloud the names of the Vietnam war dead, were arrested by Capitol police when they refused to obey an order to leave the steps.

Brown and Reps. Edward I. Koch of New York, Andrew K. Jacobs of Indiana and Abner J. Mikva of Illinois were not arrested.

Police chief James N. Powell told them they were immune to arrest while congress is in session and could not waive their immunity.

Powell told the Quakers they were violating a section of the District of Columbia code which makes it a misdemeanor to refuse to leave the public building when requested to by the person in charge.

This is the fourth time the Quaker group has read the names of Vietnam war dead on the Capitol steps and the fourth time they have been arrested.

Brown took part in the demonstration last week for the first time.

At the start of the read-in Brown welcomed the Quakers and told them they had a right under the First Amendment to remain there as long as they were peaceable. The demonstration lasted 40 minutes.

George Willoughby, 55, of Wallingford, Penn., co-chairman of the Quaker Action group read a statement which said the Quakers were there to peaceably assemble and petitioned congress and the American people for a redress of a grievance.

He said they were grieved that the Vietnam War continued. All U.S. troops should be withdrawn from Vietnam as a step towards ending "An immoral war," Willoughby said. He was one of those arrested.

Brown yesterday sent all members of congress a letter inviting them to participate in the demonstration today. He said the previous arrest, clearly deprived the arrested of their rights under the First Amendment of the Constitution.

"We feel strongly that only by protecting the constitutional rights of those who engage in peaceful assembly and petition can we discourage those who are urging other tactics," the letter said.

That day I issued the following press release; at this point I would also like to insert an article by Thomas J. Foley, of the Los Angeles Times Washington news bureau:

CONGRESSMEN DEFEND RIGHT TO GATHER ON CAPITOL STEPS

Congressman George E. Brown, Jr. (D–Calif.) was joined this week by a growing list of colleagues in extending an invitation to

all of the Members of Congress to join a group of Quakers on the center steps of the Capitol today (Wed.) at Noon to defend the group's right to assemble there peacefully.

Brown, along with Representatives Don Edwards (D–Calif.), Shirley Chisholm (D–N.Y.), Edward I. Koch (D–N.Y.), referring to arrests made by Capitol police on preceding Wednesdays, stated that "these arrests clearly deprive the arrested of their rights under the First Amendment of the Constitution."

"We feel strongly that only by protecting the constitutional rights of those who engage in peaceful assembly and petition can we discourage those who are urging other tactics," the invitation to other Members continued.

Last week, Brown, Koch, and Rep. Charles C. Diggs, Jr. (D–Mich.) joined with the Quaker group in reading the names of the Vietnam war dead from the Congressional Record. The Quakers were arrested but the police declined to arrest the Congressmen on the grounds of their Constitutional immunity from arrest for most offenses while Congress is in session.

In a newsletter to his constituents, Brown noted that "several times a day, especially during the summer months, groups of visitors are taken to the Capitol steps by Congressmen, assembled there, have pictures taken, hear speeches by the Congressmen, and hold ceremonies of different types—even to the extent of bands playing."

The California Congressman contends that the laws are being enforced arbitrarily because Congress is afraid to face the fact that its own mistakes have been partly responsible for needless deaths in Vietnam.

[From the Los Angeles (Calif.) Times, June 11, 1969]

QUAKERS TEST MORE THAN LAW

(By Thomas J. Foley)

It was Mr. Bumble in Oliver Twist who said "If the law said that, the law is a ass."

It appeared dangerously like last Wednesday when, on the East Front steps of the U.S. Capitol where Presidents are inaugurated, a dozen peaceful-minded and peaceful-acting men and women began reading from the Congressional Record.

The law said they'd have to stop and depart. If they didn't, they would be arrested.

Two sympathizers, Reps. George E. Brown Jr. (D-Calif.) and Edward I. Koch (D-N.Y.), said they had invited the people to be there and read.

No difference, said the law. The record-reading continued. So the 12 were all trundled off to the pokey.

To the law, the fact they were standing where the East Front steps are 72 feet wide and thus not blocking access to the Capitol was irrelevant.

So was the fact that every member of Congress knew in advance the 12 would be there and what they would be doing. Likewise that Rep. Brown had spoken to Speaker John McCormack and urged him to permit it.

There was no element of surprise, no rush on the Capitol, no shouting. Not even any cop-baiting.

These are the essential facts of the matter. And they should be viewed in the clear and shining light of the First Article of the Bill of Rights:

"Congress shall make no law . . . abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

There are other facts, of course. But they are material, not to the law looking like an ass, but to explaining why the 12 people were arrested.

The 12 are Quakers and pacifists, and they were reading from the Record a list of the Americans who had died in Vietnam. The list had been placed in the Record by Rep. Paul Findley (R-Ill.), an early advocate of pulling U.S. troops out of the Southeast Asian nation. Reps. Brown and Koch agree.

It is also true that the Quakers don't mind being arrested, that they are willing to go to jail for a cause and that they will take the case to the Supreme Court if necessary.

It also should be pointed out that last Wednesday was the third Wednesday they had shown up to read their list and that they, or some of their friends, will be there again this Wednesday.

But these facts only explain why it happened rather than whether it should happen.

One need not agree with the Quakers' point of view to feel a sense of outrage at this procedure.

There are innumerable legal arguments, and these will eventually be settled in the court. The American Civil Liberties Union is backing the Quakers and will see it through.

The law enforcers arrested the Quakers under one law but defended their actions in court under another. Rep. Brown believes the congressional Establishment has sufficient discretion to allow the Quakers to do their thing. The Establishment argues that they can't permit one group to do this but not another.

What seems to come through it all is a sense of fear by Speaker McCormack and the police officials of what might happen in this day of violent demonstration if they let up for the 12 Quaker pacifists.

It may even be a legitimate fear.

But what a commentary on the law, the times and man himself.

After the first arrests at which I had been present—June 4—I felt that the law employed to stop the readings was unreasonable, and I testified for the defendants in their motion to dismiss the charges. The case for that dismissal is contained in the following brief, submitted by Ralph J. Temple, of the American Civil Liberties Union:

[District of Columbia Court of General Sessions, Criminal Division]

UNITED STATES OF AMERICA, PLAINTIFF, v. JOAN NICHOLSON, JIM B. HART, BOYKIN A. REYNOLDS, BETTY VAN HUYCK, DEFENDANTS, SUPPLEMENTAL MEMORANDUM OF DEFENDANTS IN SUPPORT OF MOTION TO DISMISS THE INFORMATIONS, JUNE 12, 1969

(Criminal Nos. 20210–69A, 20211–69A, 20216–69A, 20220–69A)

Ralph J. Temple, Suite 501, 1424 16th Street, N.W., Washington, D.C., Attorney for Defendants.

Of Counsel: Robert Maynard, American Civil Liberties Union Fund.

This memorandum in support of the defendants' motion to dismiss the informations is filed as a supplement to the defendants' memorandum filed with the Court on June 6, 1969. The statement of facts is set out in the earlier memorandum and will be repeated here only in summary form.

STATEMENT OF FACTS

The defendants were among thirteen persons arrested on June 4, 1969, while standing at one extreme side of the East Front Center steps of the United States Capitol. At the time they were taking turns reading the list of Americans killed in the Vietnam war. This was the third such set of arrests in a period of less than two weeks. On May 23rd, 10 persons were arrested for the same activity and charged with incommoding the steps. The informations were dismissed as unconstitutionally vague. On May 28th, eleven persons were arrested under identical circumstances, and jury trials were scheduled for those who pleaded not guilty. The last two sets of arrests were made on charges of unlawful entry. All three assemblages were sponsored by A Quaker Action Group. On all three occasions the persons assembled did not block passage on the steps, engage in noisy or disorderly conduct, or interfere with anyone.

EVIDENCE ADDUCED AT HEARING ON MOTION TO DISMISS

I. On June 6 and 9, 1969, the Court conducted a hearing on defendants' motion to dismiss the informations on constitutional grounds. The defense presented the following witnesses who testified in substance as follows:

A. *Lawrence Scott*, a staff employe of A Quaker Action Group, testified that the purpose of the assemblages on all three occasions was to influence the Congress, the Government generally, and the public that the war in Vietnam should be ended. He testified that the Capitol Grounds and the Capitol steps were of particular importance in communicating the group's message because expressions at that location received more public and Congressional attention, particularly because of the greater attention of the news media, and because of the symbolic importance of coming to the site of Congress to petition.

B. *Congressman Edward Brown of California and Congressman Edward Koch of New York* testified that they welcomed the presence of the Quakers in this kind of assemblage on the Capitol steps. They testified that many groups had been permitted to gather on the East Front Center steps and on the House entrance steps on the East side in the past. There were introduced Defense Exhibits 6 through 15 showing groups from 12 to 100 in number gathered on the House steps. In Defense Exhibit 13, a uniformed band is shown on the House steps bearing banners and a sign on a drum identifying the group. Both Congressmen testified that they believed that assemblages such as those of the defendants were important to their roles as legislators in dramatically and effectively communicating views held by segments of the public to them, to other congressmen, and to the public.

C. *David Clark* testified that on May 28th, the same day that the second set of Quakers was arrested on the Capitol steps, he saw a group of about 40 persons sitting on steps on the northern side of the Capitol, with one of the group wearing an NAACP button. He testified that he saw another group gathered on the House entrance steps on the East side, apparently having their picture taken, a third group of about 75 persons sitting on a fence around a grassy area on the Capitol grounds, and a fourth group of 125—7th and 8th graders in their school uniform coming down the East Center steps. Cairk testified that in July 1968, 55 persons participating in the "Poor Peoples' Campaign" were allowed to assemble on the Capitol grounds near the House entrance on the East side.

D. *William Blum* testified that on June 4, 1969, the same day that the defendants were arrested, he saw a group of about 100 persons sitting on the House entrance steps on the East side, singing.

E. *Chief of the Capitol Police James Powell* testified that his actions in arresting persons on the steps on May 23, May 28 and June 4th were partly on the basis of D.C. Code, Section 9–124, and partly on the basis of unwritten rules established by the Capitol Police Board and communicated to him orally by the Speaker of the House and members of that Board.

(1) *Special Rules:* Chief Powell testified that special rules apply to the Center steps which bar all assemblages there unless permission is obtained from the Speaker of the House. He then testified that different rules apply to the House and Senate steps on the East side, whereby the Speaker will give permission to certain groups to assemble there for photographs or to meet with their Congressmen. The Chief was unclear as to whether different rules were applicable, since in all cases, he testified, the permission of the Speaker was necessary (permission of the Sergeant at Arms of the Senate for the Senate steps, and permission of the Architect of the Capitol for certain other purposes).

(2) *Standards:* Chief Powell testified that generally the Speaker decided which groups could and which could not assemble on the Capitol Grounds. The Chief testified that the decision was made on the basis of whether, in the Speaker's judgment, the group which wished to assemble was non-controversial and non-political. He testified that if a group was for or against a cause, or if it was "too liberal or too conservative" it was not allowed to assemble. He testified that this was a difficult judgment to make and that it had to be made on a case by case basis by the Speaker of the House.

(3) *Factors Leading to Arrests:* Chief Powell testified that he would have arrested the group of 13 persons assembled on the steps on June 4th even if all had been standing, even though they were blocking no one's way, and even if there had been only three assembled, only two assembled, or only one person standing on the steps reading the list of the Vietnam war dead. He testified that the factors underlying the arrests were: (a) the group did not have the permission of the Speaker of the House; (b) the group had notified the news media in advance of their planned assemblage; and (c) news media and other persons were attracted by the assemblage.

F. The defense also presented a newspaper article from the Washington Post dated May 22, 1968, reporting that a group of 350 persons from the "Poor Peoples' Campaign" was permitted to move on the Capitol Grounds in groups of 20. The Government stipulated that the newspaper reporter if called would so testify. The defense also presented in evidence, with the permission of the Court, the transcript in *United States* v. *Buchard,* D.C. Ct. Gen. Sess., U.S. 16019–68 (Sept. 16, 1968), for proof of:

(a) The Government's concession that "boys scouts or schools . . . parade there on occasions" (Tr. 15; see also p. 23); and

(b) The testimony of Sergeant Joseph Schaap of the Capitol Police (Tr. 26, et seq.) that he had the authority to permit groups of 5 or 6 persons, or groups as large as 10 persons to assemble on the Capitol Grounds (Tr. 34, 42, 48).

II. The Government presented as a witness Chief Powell, who testified as to the details of the arrests on June 4th. Chief Powell also testified that non-political uniforms, banners and signs might be allowed, but not a "political" uniform, such as that of the American Nazi Party. He could not make a judgment as to the uniform of the American Legion. Under questioning by the Court, the Chief testified that there was no certain way that a group could determine in advance whether it would break the law by coming on the Capitol Grounds and he suggested that the way to find out might be to ask a policeman at the Capitol Grounds.

ARGUMENT

I. *Assemblages Are Protected By the First Amendment:* "Demonstrating," "picketing," or "patrolling"—has recently been reaffirmed by the United States Supreme Court to be "speech" and therefore entitled to the full protection of the First Amendment:

"We start from the premise that peaceful picketing carried on in a location open generally to the public is, absent other factors involving the purpose or manner of the picketing, protected by the First Amendment." *Food Employees* v. *Logan Plaza,* 391 U.S. 308, 313 (1968).

The Court has long recognized that such speech is traditionally and properly exercised in and on public streets, sidewalks, parks and other public places:

"Wherever the title of streets and parks may rest they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens." *Hague* v. *C.I.O.,* 307 U.S. 496, 515 (1939) (Opinion of Roberts, J.).

But it is not just "pure speech" in and on public parks and streets that receives First Amendment protection; the peaceful expression of views by marches, demonstrations, assemblies, sit-ins, and even silent protest, is included as well.

"As this Court has repeatedly stated, these [First Amendment rights of speech, assembly, and petition for redress of grievances] . . . are not confined to verbal expression. They embrace appropriate types of action which certainly include the right in a peaceful and orderly manner to protest by silent and reproachful presence, in a place where the protestant has every right to be. . . ." *Brown* v. *Louisiana,* 383 U.S. 131, 141–42 (1966). See *Shuttlesworth* v. *City of Birmingham,* 37 U.S.L.W. 4203 (March 11, 1969).

It follows that if open advocacy of views is to exist, then the advocates of those views must be given access to public parks and other areas from which they may communicate their message to the public. The judicial expansion of First Amendment rights over the past few decades "has fostered the accompanying doctrine that the individual must be afforded an appropriate 'public forum' for his peaceful protests." *Davis* v. *Francois,* 395 F. 2d 730, 733 (5th Cir. 1968). The First Amendment sanctions, not just "speech," but "effective speech," see *Edwards* v. *South Carolina,* 372 U.S. 229, 235 (1963); *Saia* v. *New York,* 334 U.S. 558, 561 (1948); *Davis* v. *Francois, supra* at 735; *Williams* v. *Wallace,* 240 F. Supp. 100, 106 (M.D. Ala. 1965), and the effectiveness of this speech often turns on the nature and existence of a public forum.

The First Amendment itself explicitly recognizes "assembly" as a condition precedent to an individual's "effective" exercise of speech:

"Effective advocacy of both public and private points of view particularly controversial ones, is undeniably enhanced by group association, as this Court has more than once recognized by remarking upon the close nexus between the freedoms of speech and assembly. *De Jonge* v. *Oregon,* 299 U.S. 353, 362; *Thomas* v. *Collins,* 323 U.S. 516, 530. It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause . . ." *N.A.A.C.P.* v. *Alabama ex. rel. Patterson,* 357 US 449 (1957) See *Williams v. Wallace,* 240 F. Supp. 100, 106 (M.D. Ala. 1965).

These rights occupy a "preferred position" among constitutional liberties, *Saia* v. *New York,* 334 U.S. 558, 562 (1948), they can only be curtailed upon a showing by the government of a "compelling" regulatory interest. *N.A.A.C.P.* v. *Button,* 371 U.S. 415, 438 (1963).

II. The Government Cannot Restrict First Amendment Rights Absent Proof of a Showing that a "Compelling" Governmental Interest is Involved the Restraints Are "No Greater Than Are Essential," and the Restrictions Are No More Than "Incidental" Curtailments of Those Rights: The First Amendment freedoms of speech assembly to petition for the redress of grievances, and association, occupy a "preferred position" in the spectrum of constitutionally guaranteed liberties *Kovacs* v. *Cooper,* 336 U.S. 77, 88 (1949); *Saia* v. *New York,* 334 U.S. 558, 562 (1948); *Thomas* v. *Collins,* 323 U.S. 516, 529–30 (1945); *United States* v. *Cruikshank,* 92 U.S. (2 Otto) 542, 552–53 (1876). Therefore, the burden of justifying restrictions on these rights rests with the government. Accordingly, before the Government can impose restrictions upon the exercise of First Amendment freedoms, it must sustain its burden of proof by demonstrating the existence of a "compelling," *N.A.A.C.P.* v. *Button,* 371 U.S. 415, 438 (1963); *Sherbert* v. *Verner,* 374 U.S. 398, 403 (1963), or "paramount," *Thomas* v. *Collins,* 323 U.S. 516, 530 (1945), governmental interest which justifies that regulation.

The Supreme Court has developed standards for the permissible regulation of conduct when it is combined with various forms of speech. These standards permit restrictions on the *conduct* element, or "time, place and manner," of demonstrations and similar public gatherings, *Cox* v. *New Hampshire,* 312 U.S. 569, 575–76 (1941), but do not, of course, permit restrictions on the content of the speech itself. *United States* v. *O'Brien,* 391 U.S. 367, 376 (1968). What may be regulable is only the manner in which the speech-content is presented. A regulation could not, therefore, censor the message on a handbill or placard, no matter what the conditions of its presentation were.

The constitutional guideline developed by the Supreme Court in the area of speech-plus-conduct is to permit narrowly and precisely drawn time, place and manner regulations so long as they do not restrict the physical aspects of demonstrations any more than the government can show to be absolutely necessary to permit other competing lawful uses of public space. The Court, therefore, has struck down time, place and manner restrictions which "deny or *unwarrantedly abridge* the right of assembly and the opportunities for the communication of thought and the discussion of public questions immemorially associated with resort to public places." *Cox* v. *New Hampshire,* 312 U.S. 569, 575–76 (1941) (emphasis supplied). Only a "serious interference with normal usage of streets and parks," *Kunz* v. *New York,* 340 U.S. 290, 293–94 (1951) (emphasis supplied), can be prohibited by the government, and any restrictions must embody "narrowly drawn, reasonable and definite standards for the officials to follow . . .," *Niemotko* v. *Maryland,* 340 U.S. 268, 271 (1951). At all times the First Amendment freedoms must be kept "in a preferred position." *Saia* v. *New York,* 334 U.S. 558, 562 (1948).

Thus, a community cannot prohibit the distribution of pamphlets and other literature to prevent littering and unsightly sidewalks, *Schneider* v. *State,* 308 U.S. 147 (1939); a local regulation cannot prohibit the circulation of anonymous pamphlets, *Talley* v. *California,* 362 U.S. 60 (1960); a municipal ordinance cannot prohibit the use of loudspeakers or sound trucks on public streets, *Saia* v. *New York,* 334 U.S. 558 (1948), or the ringing of doorbells, *Martin* v. *City of Struthers,* 319 U.S. 141 (1939), in the name of community tranquility; and a local regulation cannot prevent the playing of religious phonograph records on public streets absent a "clear and present menace to public peace and order . . .," *Cantwell* v. *Connecticut,* 310 U.S. 296, 311 (1940).

Recently, the Supreme Court has explicitly restated the constitutional requirements for time, place and manner standards regulating peaceful picketing and other forms of public demonstrations. In *Food Employees* v. *Logan Plaza,* 391 U.S. 308, 313 (1968), the Court declared "peaceful picketing," which "involves elements of both speech and conduct," i.e., "patrolling," to be "protected by the First Amendment," and in *United States* v. *O'Brien,* 391 U.S. 367, 376 (1968), the Court warned that "when 'speech' and 'nonspeech' elements are combined in the same course of conduct," only a *sufficiently important* governmental interest in regulating the nonspeech element can ever justify even "incidental limitations on First Amendment freedoms." (Emphasis supplied.)

The standards by which the government may restrict the exercise of the rights to speech, petition, and association, therefore, are clear. As the Court held in *United States* v. *O'Brien, supra,* any regulation restricting the full and free exercise of normally protected speech-conduct activities will be declared unconstitutional unless: (1) the

regulation "furthers an important or substantial governmental interest"; (2) the "governmental interest is unrelated to the suppression of free expression"; and (3) the incidental restriction on alleged First Amendment freedom is no greater than is essential to the furtherance of that interest." *United States* v. *O'Brien*, 391 U.S. at 377. (Emphasis supplied.)

III. Assembly and Speech Cannot Be Prohibited in Generally Unrestricted Public Areas: Public property may be restricted to certain uses, and it generally is so restricted inside public buildings and offices. However, open areas to which the public is generally admitted without special restrictions and under the same circumstances as the public uses of parks and sidewalks, may not be barred to those wishing to assemble, petition, and exercise expression.

Thus, for example, in *Adderley* v. *Florida*, 385 U.S. 39 (1966), where the Court unheld trespass convictions of those who demonstrated on jailhouse grounds, the Court emphasized:

"This particular jail entrance and driveway were not normally used by the public . . . (385 U.S. at 45)

* * * * *

"There is not a shred of evidence in this record that this power [to order persons off the jail grounds] was exercised, or that its exercise was sanctioned by the lower courts, because the sheriff objected to what was being sung or said by the demonstrators or because he disagreed with the objectives of their protest. The record reveals that *he objected only to their presence* on that part of the jail grounds reserved for jail uses. *There is no evidence at all that on any other occasion had similarly large groups of the public been permitted to gather on this portion of the jail grounds for any purpose.*" (385 U.S. at 47) (Emphases added.)[1]

The record shows that the Capitol Grounds are generally open to the public for the same unrestricted use that other public places are open. Under D.C. Code, Section 9–123, a series of specific actions inside and outside the buildings on the Capitol Grounds are prohibited in almost any indoor and outdoor public places.

In *Hague* v. *C.I.O.*, 307 U.S. 496 (1939), the Court affirmed an injunction issued against enforcement of laws prohibiting public meetings in Jersey City. The Court distinguished an earlier decision in the following terms (307 U.S. at 515, 516):

"The ordinance there in question apparently had a different purpose from that of the one here challenged, for it was not directed solely at the exercise of the right of speech and assembly, but was addressed as well to other activities, not in the nature of civil rights, which doubtless might be regulated or prohibited as respects their enjoyment in parks. In the instant case the ordinance deals only with the exercise of the right of assembly for the purpose of communicating views entertained by speakers, and is not a general measure to promote the public convenience in the use of the streets or parks.

"* * * * *

"We think the court below was right in holding the ordinance quoted in Note 1 void upon its face. It does not make confort or convenience in the use of streets or parks the standard of official action. It enables the Director of Safety to refuse a permit on his mere opinion that such refusal will prevent 'riots, disturbances or disorderly assemblage.' It can thus, as the record discloses, be made the instrument of arbitrary suppression of free expression of views on national affairs for the prohibition of all speaking will undoubtedly 'prevent' such eventualities. But uncontrolled official suppression of the privilege cannot be made a substitution for the duty to maintain order in connection with the exercise of the right."

The government may not discriminate against First Amendment rights. If a public area is generally unrestricted, speech and assembly cannot be prohibited thereon.

IV. Capitol Grounds, Unlike Jail Houses and Courts, Cannot Be Immunized From Peaceable Assembly: In *Edwards* v. *South Carolina*, 372 U.S. 229 (1963), the Court reversed breach of the peace convictions resulting from an assemblage of almost 200 chanting, clapping demonstrators on the grounds of the South Carolina State Capitol. The language of the Court indicates its acute awareness that it was addressing itself to a demonstration on a peculiar piece of ground. The Court went out of its way to stress that the uniqueness of the ground as that of a state legislature gave particular importance—rather than less protection—to the First Amendment rights involved.

"They peaceably assembled at the site of the State Government and there peaceably expressed their grievances . . ." (372 U.S. at 235).

The Court, in an 8 to 1 opinion by Justice Stewart, called this an exercise of the rights of speech, assembly, and petition "in their most pristine and classic form." (*Ibid*) The Court also added the following footnote to the above quoted sentence:

"It was stipulated at trial that the State House grounds are occupied by the Executive Branch of the South Carolina government, the Legislative Branch and the Judicial Branch, and that, during the period covered in the warrant in this matter . . . the Legislature of South Carolina was in session." (372 U.S. at 235, note 10).

The Court stated that "an evenhanded application of a precise and narrowly drawn regulatory statute" would be upheld, and gave as an example "a law reasonably limiting the periods during which the State House Grounds were open to the public." (385 U.S. at 236).

In *Cox* v. *Louisiana*, 379 U.S. 559 (1965), when the Court, although reversing convictions, stated that it recognized the validity of a state law prohibiting picketing near a courthouse, it stressed the necessity to protect the judicial function from public "pressures." (379 U.S. at 491). This is a recognition that the courts, unlike the Executive and Legislature, are not intended to be responsive to public sentiment, but that, to the contrary, there is a substantial governmental interest in immunizing judges and jurors from public sentiment. The Court went so far as to suggest that picketing even a courthouse might be protected if it were directed, not at the judicial process, but at the mayor or another official "who just happened to have an office located in the courthouse building." (379 U.S. at 567).

The distinction was also emphasized by Justice Black (who had joined in the opinion in *Edwards*, *supra*), in his opinion upholding the trespass convictions of those who demonstrated on the jailhouse grounds in *Adderley* v. *Florida*, *supra*. Justice Black said:

"In Edwards, the demonstrators went to the South Carolina State Capitol grounds to protest. In this case they went to the jail. Traditionally, state capitol grounds are open to the public. Jails, built for security purposes, are not. (385 U.S. at 41).

We have found no case holding that orderly assemblies may be prohibited on the grounds of a legislature, generally open to the public.

In *Feeley* v. *District of Columbia*, 220 A. 2d 325 (D.C. App. 1966), *reversed*, 128 App. D.C. 387, F. 2d 216 (1967), the District of Columbia Court of Appeals suggested that Section 9–124 of the D.C. Code was a valid provision since it "is clear and nondiscriminatory on its face and prohibits any and all groups from parading or assembling in a certain defined area." Counsel has been informed that in an unreported order the D.C. Court of Appeals summarily reversed the decision of Judge Halleck in the case of *United States* v. *William R. Riley*, cited at pp. 4–5 of Defendants' earlier memorandum.

First, the reference in *Feeley* does not have reliable status as stare decisis. The references to Section 9–124 were dictum in the opinion. In reversing, the United States Court of Appeals emphasized that Section 9–124 of the D.C. Code was not relied upon by the Government in prosecuting the cases. Thus, the reference in *Feeley* is dictum referring to a statute not in issue in the case, contained in an opinion reversed on appeal. The reversal in *Riley*, being unreported and without opinion, is also unreliable. It could have been reversed on the ground that the Government was not permitted to present its proof.[2]

Second, the statement in *Feeley* is wrong, in light of the Supreme Court decisions cited above. As between those decisions and the dictum contained in a decision reversed on other grounds, this Court should adhere to the path struck by the Supreme Court in *Edwards*, *Cox*, and *Adderley*, indicating that capitol grounds, unlike jails and courts, are not constitutionally to be immunized from public assembly, expression and orderly influence.

Finally, it is clear on the record before this Court that the restrictions on assemblages on the Capitol Grounds have not been uniformly and evenhandedly applied. To the contrary, the testimony of Chief Powell established that groups are permitted or barred on the basis of whether they are non-controversial, non-political, for or against a cause, or too liberal or conservative. This evidence goes to more than the application of the statute; it reflects on the assumptions of the D.C. Court of Appeals in its dictum in *Feeley*.

Thus, in *Feeley*, in quoting Section 9–124, the Court above neglected to refer to those parts of 9–124 and 9–128 which authorize the Speaker of the House and others to "suspend" the restrictions on assembly for "occasions of national interest becoming the cognizance and entertainment of Congress." If there had been any thought that these words provided a sufficiently narrow and precise standard to govern the giving and withholding of permission to assemble, the experience under the statute, as shown on the record in this case, dispels it. The statutory scheme is shown, by the experience under it, to confer upon the officials an overly broad discretion which has permitted them to discriminate in an arbitrary manner in permitting and prohibiting assemblages. Hence, the statute is unconstitutional on its face.

Moreover, if it were permissible to bar all assemblages, the Government could not distinguish between those which were for purposes of expression and those that were not. See *United States* v. *O'Brien*, *supra*; *Hague* v. *C.I.O.*, supra. The fact that the statute has been applied, not to bar assemblages, but to suppress certain views, is

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[1] See, also, Justice Douglas' statement in his dissenting opinion that (385 U.S. at 48, 54):

"There may be some public places which are so clearly committed to other purposes that their use for the airing of grievances is anomalous. There may be some instances in which assemblies and petitions for redress of grievances are not consistent with other necessary purposes of public property. A noisy meeting may be out of keeping with the serenity of the statehouse or the quiet of the courthouse. No one, for example, would suggest that the Senate gallery is the proper place for a vociferous protest rally."

[2] Indeed, in *United States* v. *Buchard* (cited in defendants' earlier memorandum, p. 5), decided one week after the summary reversal in *Riley*, Judge Edgerton rejected the Government's argument that *Riley* overruled *Banks*, and adhered to Judge Greene's interpretation of Section 9–124.

further evidenced by Chief Powell's testimony that he would have arrested two persons (see *Hunter* v. *District of Columbia*, 47 App. D.C. 406 (1918)), and even one person reading the list of Vietnam war dead as a protest against the war. Thus, the statute is unconstitutional as applied.

V. The Rules Which Were Relied Upon By the Government are Unconstitutionally Vague: At this point, it is still difficult to discern the theory of the prosecution. The Government stated it was not relying on Section 9–124. Near the end of its argument, the Government suggested that it might be relying upon Section 9–123(b)(7) prohibiting parading, picketing, and demonstrating "within" the Capitol Buildings. No evidence, authority, or reasoning was presented, however, to rebut the normal understanding that "within" a building includes that portion within the walls and under the roof.

Chief Powell never seemed clear under which law he was acting. He testified that he was acting under unwritten rules promulgated by the Capitol Police Board which at various times in his testimony he believed were the same as and different from Section 9–124 and other unwritten rules regulating the use of other steps and the Capitol Grounds generally. Chief Powell conceded that a citizen cannot know in advance which of his actions might violate the law on the Capitol Grounds. Clearly, the rules applied are unconstitutionally vague. See *Wright* v. *Georgia*, 373 U.S. 284, 292, 293 (1963); *Edwards* v. *South Carolina*, *supra*, 372 U.S. at 236–37; *Cox* v. *Louisiana*, *supra*, 379 U.S. at 574.

CONCLUSION

The Government emphasized in its argument that these are turbulent and violent times. All the more reason to draw sharply the lines between peaceable assembly and mob intimidation—all the greater the importance of keeping open all orderly and lawful means of protest. As the Supreme Court said in *De Jonge* v. *Oregon*, 299 U.S. 353, 364–65 (1937):

"The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government."

For the reasons stated in this memorandum and in Defendants' earlier memorandum, the Court should dismiss the informations on the ground that the statutory scheme restricting assemblages and speech on the Capitol Grounds and the "rules" thereunder are unconstitutional on their face and as applied, or in the alternative, are unconstitutionally vague.

Respectfully submitted.

Last Wednesday, June 18, members of a Quaker Action Group tried for a fifth time to continue reading the names of Vietnam war dead. Five Members of Congress, Mrs. CHISHOLM, Mr. CLAY, Mr. KOCH, Mr. MIKVA, and I, again joined in the reading. Thirty-four persons were arrested in two separate demonstrations, as noted in the following news item:

[From the Washington (D.C.) Post, June 19, 1969]

PROTESTS FOR PEACE BRING 34 ARRESTS ON STEPS OF CAPITOL

(By Paul W. Valentine)

Thirty-four Vietnam war protesters were arrested yesterday on the Capitol steps in two separate incidents after they refused to stop reading the names of 35,000 American war dead.

Their arrest—on charges of unlawful entry—was similar to group arrests made four times earlier this month and in May by Capitol Police.

The action came during a day in which another 150 war and draft protesters visited the offices of some 80 Senators in small delegations, to poll the Senators' views on the war, the political nature of the Saigon government and the right of American servicemen to dissent from the war.

The visitors reported mixed receptions from the Senators, ranging from friendly support to hostility to evasiveness or no response at all.

The visits were organized by a national coalition of peace groups including the Fellowship of Reconciliation, Clergy and Laymen Concerned About Vietnam, Resist, and Women Strike for Peace.

They finished a two-day program of direct action in the city directed at focusing Government and congressional attention on what the protesters consider to be inequities of the war, the draft and the punishment of GIs who protest the war.

At the Capitol steps, five Congressmen joined a group of 16 persons reading the list of American war dead at noon.

The protesters, organized by A Quaker Action Group, were ordered arrested 35 minutes later by Capitol Police Chief J. M. Powell.

The Congressmen, who are immune from arrest for such misdemeanors while Congress is in session, were left alone.

As the 16 protesters were led away by police, a 17th was arrested on a charge that he was unlawfully displaying a protest banner on the Capitol grounds.

Federal law forbids all political and other demonstrations on the grounds.

A crowd of about 300 tourists, sympathizers and Capitol Hill employees looked on during the arrests as a light rain began to fall.

Many in the crowd applauded the protesters and raised their fingers in the "V" peace signal.

The five Congressmen—Reps. Shirley A. Chisholm (D-N.Y.), George E. Brown (D-Calif.), William L. Clay (D-Mo.), Edward I. Koch (D-Liberal, N.Y.), and Abner J. Mikva (D-Ill.)—continued to read the war dead list briefly after the protesters were taken away. Then they left.

"I look to the day when the Speaker of the House is out here reading with us," Brown said to Chief Powell as the two passed each other on the steps.

Koch decried what he considers the absurdity of the law forbidding peaceful demonstrations on the Capitol grounds.

Two hours later, a second group of 17 protesters assembled on the same steps, resumed reading the list and were also ordered arrested by Powell.

Both arrest procedures were orderly.

The 34 appeared before General Sessions Court Judge Tim Murphy in a seven-hour marathon session that ended at 10:30 p.m. For the first time, those who do not live in the area were required to post $30 bond for pretrial release.

All those freed on bond were released under the condition that they not participate in other demonstrations on Capitol Hill.

This brings the total of arrests to 88 since A Quaker Action Group, a Philadelphia based organization, sponsored the first "read-in" on the steps May 23, a Friday.

Members and supporters of the group have reappeared on the steps every Wednesday since then.

In a third incident during the day, eight other war protesters were arrested in the Pension Building at 5th and G Streets nw., where several Selective Service offices are located. The group was reading the war dead list and were arrested on unlawful entry charges when they refused to leave at the 6 p.m. closing time.

The 150 protesters who visited the Senators' offices yesterday were following up a June 2 letter sent to all 100 Senators by Richard F. Fernandez, director of Clergy and Laymen Concerned About Vietnam.

The letter asked the Senators whether they believe the United States should support the "repressive regime" in Saigon, whether the military should punish servicemen for dissenting and whether the Senators will act on these issues.

Most visitors said they did not see individual Senators, but received especially favorable responses from the offices of Sens. Thomas F. Eagleton (D–Mo.), Mark O. Hatfield (R–Ore.) and Vance Hartke (D–Ind.).

Mr. Speaker, by late last week, the overall situation appeared this way. A Quaker Action Group was adamant in its plans to continue attempting the readings irrespective of the constant threat of arrest. An increasing number of Members of Congress stood behind the group, and argued along with it there should be no legal obstacle to the reading of names upon the steps. The Capitol Police, under orders from the Capitol Police Board, insisted that arrests would continue as long the demonstrations persisted. At the same time, the District of Columbia general sessions court was considering the motion to dismiss charges in the earlier cases.

Then last Thursday, Judge Harold H. Greene decided that the demonstrators did have the right to read the war dead names as long as the activity was carried out in a peaceful, nondisruptive manner. I now place in the RECORD Judge Greene's opinion:

[District of Columbia Court of General Sessions, Criminal Division]

UNITED STATES OF AMERICA, PLAINTIFF, *v.* JOAN NICHOLSON, JIM B. HART, BOYKIN A. REYNOLDS, MARY E. VAN HUYCK, DEFENDANTS

(Criminal Nos. 20210–69A, 20211–69A, 20216–69A, 20220–69A)

OPINION

On June 4, 1969, defendants (together with nine others) were arrested for and charged with unlawful entry, in violation of D.C. Code § 22–3102. Two days later, prior to trial, defendants moved to dismiss the informations on constitutional grounds. The testimony[1] taken on the motion concerned primarily the standards used in administering the laws relating to the use by the public of the Capitol Grounds. That portion of the testimony is detailed and discussed *infra*, principally at pp. 5–7.

The evidence also showed that defendants (who are members of and sponsored by the Quaker Action Group) were arrested on the center steps of the East Front of the Capitol while they were reading a list of the Vietnam war dead from the Congressional Record. The arrests occurred when the defendants refused to leave in compliance with an order from James M. Powell, Chief of the Capitol Police.[2] Other Quakers in groups of approximately the same size had previously been arrested when they engaged in similar conduct under the same sponsorship. There is an indication that these activities will continue.

I

The unlawful entry statute provides for the punishment of anyone who, being on public or private property "without lawful authority to remain . . . thereon", refuses

Footnotes at end of article.

to leave on demand of the person lawfully in charge. As applied to privately-owned land, this kind of law generally raises few difficult legal problems because ownership of such land ordinarily includes the right, arbitrarily or otherwise, to curtail admission and use.

The application of trespass statutes to government land presents greater complexities. Some species of government property—*e.g.*, the offices of executives and those of many other government workers; conference chambers; scientific or research facilities; storage warehouses of valuable commodities—are entitled to be as immune from invasion by one not wanted on the premises as is private realty. But there are other types of government land—public parks, streets and sidewalks, and historic landmarks—which may not ordinarily be closed to the public for reasonable use. See *Hague* v. *C.I.O.*, 307 U.S. 496, 515–16 (1939); *Marsh* v. *Alabama*, 326 U.S. 501 (1946); *Cox* v. *Louisiana*, 379 U.S. 536 (1965); *Shuttlesworth* v. *Birmingham*, — U.S. — (1969); *Gregory* v. *Chicago*, — U.S. — (1969).

The Capitol of the United States, a national historical shrine and the political centerpiece of the Republic, is in the latter category. It may not be declared off limits to the people. Indeed, the Congress invites and welcomes the public.

In view of the broad and general invitation extended to the citizenry to this preeminently public building and the surrounding grounds, individual citizens could not be held to be "without lawful authority to remain . . . thereon", within the meaning of the unlawful entry statute, in the absence of some other, specific bar to their presence.

That bar could not, legally, be an order by the Chief of the Capitol Police issued on his own authority. Chief Powell would have the power to order someone ejected from the Capitol Grounds by virtue merely of his official position only if he had the same kind of proprietary interest in and control over the United States Capitol than an ordinary householder has with respect to his own home—which clearly he does not. See *Hague* v. *C.I.O.*, *supra*, 307 U.S. at 514. He can order the ejection only of those who have no legal right to be there.

In other words, the order to these defendants to leave was valid only if it was based on something other than and additional to the unlawful entry statute itself or the Chief's official status. And the only other source of authority cited by the prosecution is the Capitol Grounds statute, D.C. Code §§ 9–118 to 9–132.[3] Thus, it is the meaning and the validity of the Capitol Grounds statute which are really at issue here—the unlawful entry law adds nothing.[4]

II

Defendants argue that the statute is vague and for that reason unconstitutional. *Cox* v. *Louisiana*, *supra*; *Wright* v. *Georgia*, 373 U.S. 284, 292 (1963); *Lanzetta* v. *New Jersey*, 306 U.S. 451 (1939); *Connally* v. *General Construction Corp.*, 269 U.S. 385, 391 (1926).

D.C. Code § 9–124 forbids anyone to "parade, stand, or move in processions or assemblages . . . or to display . . . any flag, banner, or device designed or adapted to bring into public notice any party, organization or movement" except as permitted by the Speaker of the House and the President of the Senate for "occasions of national interest becoming the cognizance and entertainment of Congress" (D.C. Code § 9–128).[5]

The statute (particularly section 128) is sufficiently broad as interpreted by those charged with its enforcement[6] to lend itself to selective application. Moreover, the standards actually employed have been imprecise, fluctuating, and unavailable to the public.

Chief Powell, who enforces the Capitol Grounds statute, was questioned at some length concerning his understanding of the standards governing that enforcement. He testified that there are no written rules; permits likewise are usually not in writing; members of the public have no way of knowing whether they might be in violation of the law or how to avoid violations except by prior experience or by inquiries to Members of Congress or members of the Capitol Police Force;[7] the rules applicable to the grounds are not identical to those applicable to the steps, and those which govern the use of some steps differ from those applicable to other steps; no assemblages for any purpose are allowed on the steps without a permit, but high school students and other undefined groups sometimes do not need a permit if they assemble on the steps for photographs which are taken more or less "spontaneously" or within fifteen minutes or so; such groups are allowed to meet in uniform, but not the American Nazi Party, and possibly, or possibly not, the American Legion; banners and flags may not be deployed, but a "non-political organization which had no pro or con might be permitted to display banners; a relatively small group talking on the steps for approximately half an hour might or might not be in violation if its members refused to obey an order to leave; and decisions are made on a case-by-case basis rather than according to precise general rules.

The internal inconsistencies revealed by Chief Powell's testimony are further complicated by the fact that others in a position to know contradicted some of his assertions.

Chief Powell stated that permits are required regardless of the size of the group; Sergeant Schaap of the Capitol Police Force testified (in another proceeding) that groups of as many as ten persons may assemble without a permit; members of the Poor Peoples Campaign were allowed on the grounds in groups of twenty; press reports indicate that demonstrators in large numbers supporting Representative Adam Clayton Powell were permitted on the steps because Chief Powell had "orders to permit the demonstration;" and on the occasion of an earlier Quaker arrest, four other fairly sizeable groups were permitted freely to gather in the vicinity.

Chief Powell maintained that Members of Congress require permits for group gatherings on the Capitol steps like everyone else. But Representative George E. Brown and Edward I. Koch both testified that permits are not required on such occasions; that "innumerable" such groups are invited[8] by Members of Congress to the steps; that by custom "it has never been required that one ask permission to do this;" and that these activities take place constantly at the sole discretion and on the sole authority of the Congressman involved.[9]

The vagueness of the administrative practice and the selectivity with which it is applied may also be illustrated by the fact that, when these defendants were arrested, the Congressmen who were with them and who participated in the same conduct, were not (although they specifically waived any congressional immunity).

The conclusion is inescapable that, as the law is administered, it is impossible for anyone to know whether his presence, or the presence of his group, on Capitol Hill is lawful or unlawful. There is no set of regulations, orders, rules, or standards which he can consult, and the precedents of administration themselves are contradictory and uncertain.

Chief Powell's suggested remedy—that a member of the Capitol Police Force be asked for advice—does not solve the problem, for two reasons. First, the evidence is that no set of standards exists that is followed by all members of that Force. Second, and more fundamentally, in a government of laws, the regulation of conduct—particularly conduct in the sensitive area covered by the First Amendment—must be predicated on a set of definite rules, not on the opinions of police officers. Cf. *Cox* v. *Louisiana*, *supra*, 379 U.S. at 552.

Broad laws can be given structure by consistent patterns of administration. But the enforcement of this law, as revealed by this record, has done nothing more than to add to its uncertain substance the grains of individualized decision-making—a process which has failed to provide it with constitutional strength. Compare *Staub* v. *City of Baxley*, 355 U.S. 313, 322 (1958).

It remains to be determined whether statutory construction can give more definitive shape to this law and thus save it from invalidity.[10] Cf. *Screws* v. *United States*, 325 U.S. 91 (1945).[11]

The evidence, the arguments, and the background materials indicate that three lines of construction are conceivable, two indicated by the predominant patterns of administration, the other by several indicia of congressional history and understanding.

III

Leaving to one side the aberrations and ambiguities, Chief Powell's testimony suggests that, insofar as enforcement of the Capitol Grounds statute is concerned, groups of persons are classified generally into three broad categories. The first is comprised of school children and some others who are permitted to gather for such activities as the taking of "spontaneous" photographs with their congressional representatives without the necessity for a waiver or permit. The second category consists of groups which are "noncontroversial and nonpolitical." Upon request, these groups are given a waiver by the Speaker, the President of the Senate, or both, permitting them to assemble on the Capitol Grounds. Those who are deemed to be controversial or political are in the third category and are refused a waiver, no matter how small the group[12] or how well behaved its members.

The standard of noncontroversiality[13] is impossible of even-handed, impartial, and constitutional application.

What one person may consider well settled and beyond debate may be highly controversial to another. Even students—whom Chief Powell considered the least controversial of all—are scarcely always that, in this age of college and high school demonstrations and confrontations. With controversiality as the yardstick, who would and who would not be permitted to assemble on Capitol Hill—an organization of student radicals; an equal number of middle-of-the-road fraternity men; or an organization of militant young conservatives? Is a group advocating segregation more controversial or less so than one preaching integrated housing?[14] Is an organization protesting the Vietnam conflict more or less controversial than another supporting the war?

The answers obviously depend upon the point of view of the person making the determination.

But under our constitutional system, no public official—executive, legislative, or judicial—can have the power to permit or to prohibit assembly on property belonging to the people based on his notions of what stand on public issues may be controversial. In the first place, the concept of controversiality is simply not sufficiently tangible to serve as a solid basis for this kind of decision. Beyond that, lack of controversy is too easily equated with orthodoxy, and controversy with dissent. Yet the controversial is as entitled to be heard as the indisputable, and it may need a hearing far more. In short, for several reasons the controversiality standard employed by Chief Powell is not compatible with constitutional values and principles.

IV

The government suggests, alternatively, that it may be that the distinctions which

Footnotes at end of article.

are being made in the administration of the Capitol Grounds law have their roots not in the political coloration of the particular groups but in the type of activity they engage in while at the Capitol. If they come as tourists or visitors, it is said, they are permitted to gather; if they come to engage in persuasion by speech or sign or assembly, their presence is prohibited. This, the prosecution argues, is a perfectly proper and constitutionally unobjectionable practice. But this restatement of the permit policy amounts to but another way of saying that the Capitol Grounds are open to all except those who seek to use them for the exercise of First Amendment rights. That, however, is a constitutionally impermissible standard, not only under the First Amendment but also under the due process clause of the Fifth Amendment.[15]

Absent compelling circumstances, members of the public may not be excluded from public areas because of their purpose to use these areas for the exercise of First Amendment rights. *Cox* v. *New Hampshire*, 312 U.S. 659 (1941); *Niemotko* v. *Maryland*, 340 U.S. 268 (1951); *Food Employees* v. *Logan*, 391 U.S. 308, 315 (1968); *Kunz* v. *New York*, 340 U.S. 290 (1951); cf. *United States* v. *O'Brien*, 391 U.S. 367 (1968); *Stromberg* v. *California*, 283 U.S. 359 (1931). For the streets and parks "have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thought between citizens, and discussing public questions." That use may be regulated "but it must not, in the guise of regulation, be abridged or denied." *Hague* v. *C.I.O.*, *supra*, 307 U.S. at 515. For these reasons, and because First Amendment rights occupy a "preferred position" (*Saia* v. *New York*, 334 U.S. 558 (1948)), the burden is on the government to establish the existence of compelling circumstances, justifying a restriction. *NAACP* v. *Button*, 371 U.S. 415, 438 (1963).

A legislative body particularly could not permit access to it of only the innocuous, for peaceful, reasoned controversy and debate are the very lifeblood of the democratic process.

In this day of the violent confrontation, the harsh, non-negotiable demand, the disregard of the most elementary forms of civilized discourse, it is especially important that peaceful speech and courteous persuasion be given their rightful chance. It would be strange, indeed, if our constitutional system, and especially the First Amendment, were to countenance the congregation on the grounds occupied by the national legislature of all manner of groups except those who wish to speak out peacefully on the controversial issues of the day. That is not the mark set by the Bill of Rights.

It is presumably for that reason that Mr. Justice Stewart, speaking for a near-unanimous Supreme Court, held in the controlling case of *Edwards* v. *South Carolina*, 372 U.S. 279 (1963), that non-violent demonstrations on the grounds of the South Carolina State Capitol were constitutionally protected from interference,[16] and reversed breaches of the peace convictions of 187 Negroes protesting there against alleged discrimination.

Lest there be any question about what was meant in *Edwards*, the Court removed that doubt three years later in *Adderly* v. *Florida*, 385 U.S. 39 (1966). In that case, in upholding a conviction for assembling not far from jail, the Supreme Court drew a sharp distinction between such a meeting and one held close to a structure housing a legislative body. Said the Court (385 U.S. at 41): "In *Edwards*, the demonstrators went to the South Carolina State Capitol Grounds to protest. In this case they went to the jail. Traditionally, state capitol grounds are open to the public. Jails, built for security purposes, are not."

Edwards could be distinguished from the instant situation only on the theory that there is a First Amendment right to speak, assemble, and petition near State legislative buildings but no right to do so near the buildings occupied by the Congress of the United States. Not only is there no warrant in either logic or history for such a distinction, but to make it would turn upside down both the constitutional and the practical realities.

The first Amendment which protects the rights to free speech, assembly, and petition, is addressed primarily to the Congress, and only by implication has it been applied also, by way of the Fourteenth Amendment, to the States. Moreover, in this day of great federal power and influence, the right to petition is, if anything, more important in relation to the federal authorities than it is in relation to the governing bodies of the individual States. In short, *Edwards* applies here *a fortiori*.

For these reasons, the statue could not constitutionally be applied to enforce a policy of keeping off the Capitol grounds groups of persons merely because they are controversial in character or because they seek to exercise First Amendment rights.[17]

V

The other possible line of construction of the law rests on legislative history and statutory development. It is not solidly grounded in administrative practice or actual use; yet, for reasons which will be developed below, it is the one to be followed.

The original purpose of section 124, when enacted in 1882, was not to bar all controversial groups or to keep from the Capitol Grounds all except tourists and visitors, but only "to prevent the occurrence near [the Capitol] of such disturbances as are incident to the orderly use of public streets and places." 22 Stat. 126.

Recent amendments to the companion section 123 and their legislative history indicate that the congressional view concerning the scope of regulations of conduct on the Capitol Grounds has not significantly changed since 1882.

Section 123 was amended in 1967 to establish a number of specific and carefully circumscribed prohibitions with respect to activities in the Capitol Buildings and on the Capitol Grounds.[18]

In the course of committee consideration of the bill[19] which, with some modifications, became the present section 123, Senator Jordan, chairman of the subcommittee conducting the hearings, made quite clear at the very outset that what was intended was to provide adequate safeguards "to insure that Congress can transact its business and perform its constitutional functions in an orderly manner, without interference," and at the same time "to guarantee that there is no infringement on the rights of the people . . . to assemble peaceably and to petition the Government for a redress of grievances" (Hearings, p. 1).

Senator Tydings similarly drew attention to these dual purposes, stating that what was needed was language "which would protect the reasonable right of peaceful picketing or demonstration, but which at the same time would give power to promulgate reasonable regulations" so as to prevent violations of the criminal provisions and to protect the orderly functions of the legislative branch (Hearings, p. 19).[20]

It must be borne in mind, too, that while the enforcement practices of the statute have been described in terms of the controversial-noncontroversial dichotomy, underlying at least some of those practices was the desire to assure the security of the Congress from interference and disturbance, in line with the original purpose of the statute and the reason for the 1967 amendments. Finally, it may be noted that the District of Columbia Court of Appeals recently concluded (*Feeley* v. *District of Columbia*, *supra*, note 17) that the Capitol Grounds statute was designed to guarantee noninterference with the work of the legislature, the maintenance of the free and undisturbed movement of tourists and visitors, and the protection of the landscape.

While, of course, these bits of legislative and administrative purpose do not compare in volume with the long-standing, though somewhat confused, administrative practice, they should nevertheless be given controlling weight, in view of the paramount rule of statutory construction that it is the duty of the Court to adopt a construction, if it is possible to do so, which will save the statute from unconstitutionality, rather than one which would result in its destruction. *Lynch* v. *Overholser*, 369 U.S. 705 (1962); *Rescue Army* v. *Municipal Court*, 331 U.S. 549, 568–575 (1947); *Ashwander* v. *T.V.A.*, 297 U.S. 288, 345 (1936); *Greene* v. *McElroy*, 360 U.S. 474 (1959); *United States* v. *Harriss*, 347 U.S. 612, 618 (1954); *Screws* v. *United States*, 325 U.S. 91, 100 (1945); *Schneider* v. *Smith*, 390 U.S. 17 (1968); *Bolton* v. *Harris*, — U.S. App. D.C. —, 395 F. 2d 642 (D.C. Cir. 1968).

Adherence to this rule is particularly important in the present context. Too many legislative bodies, from the Senate in ancient Rome to the French Chamber of Deputies in modern times, have been pressured and intimidated by groups hostile to democratic forms of government for anyone to be oblivious of the danger that such potential intimidation presents. For that reason, special care must be exercised not to read the law so as to leave a vacuum,[21] if it is at all possible to do so.

VI

I conclude that the legislative and other materials discussed under V *supra* provide a sufficient basis for restricting the scope of section 124 to the imposition of criminal punishment for acts or conduct which interferes with the orderly processes of the Congress, or with the safety of individual legislators, staff members, visitors, or tourists, or their right to be free from intimidation, undue pressure, noise, or inconvenience. As so limited, the statute is constitutional.

It is appropriate, therefore, under the statute, to bar or to order from the Capitol Grounds, any group which is noisy, violent, armed, or disorderly in behavior; any group which has a purpose to interfere with the processes of the Congress, any Member of Congress, congressional employee, visitor, or tourist; any group which has the effect, by its presence, of interfering with the processes of the Congress, any Member of Congress, congressional employee, visitor, or tourist; and any group which damages any part of the building, shrubbery, or plant life.[22]

Accordingly, the prosecution will be permitted to proceed by way, first, of an opening statement if it wishes to do so. If that opening statement outlines evidence which prima facie would justify a conviction based on the standards here laid down, the trial will go forward. If the government concludes that it is unable to make an opening statement outlining acts which would constitute an offense under the statute as interpreted herein, or if the Court should conclude after hearing the opening statement that no offense has been stated, the charges will be dismissed.[23]

HAROLD H. GREENE,
Chief Judge.

FOOTNOTES

[1] Those testifying were Congressman George E. Brown of California; Congressman Edward I. Koch of New York; Chief of the Capitol Police James M. Powell; Lawrence Scott, Executive Secretary of the Quaker Action Group; and David Clark and William Bloom, two observers of the allegedly illegal acts.

[2] The Capitol Police declined to arrest the three Members of Congress who participated in this activity, although they waived their congressional immunity.

[3] That statue can also be found in 40 U.S.C. § 193.

[4] Chief Powell testified that no one is arrested under the unlawful entry law who has a permit issued pursuant to the Capitol Grounds statute; and that "identical" standards are applied under the two laws in determining whether a violation occurred.

[5] The power to suspend the statutory prohibitions devolves upon other officials in the absence of the Speaker and the President of the Senate.

[6] These officials (presumably in reliance on the "becoming the . . . Congress" clause) have construed the exception contained in section 128 as authorizing them to issue permits for a great many relatively pedestrian assemblages, such as the taking of photographs on the Capitol steps. The Attorney General, on the other hand, has interpreted the same provision as justifying the grant of permits only for "such official ceremonies as the quadrennial inauguration of the President in front of the Capitol." Brief of the Department of Justice in No. 21,566, *Jeannette Rankin Brigade* v. *Chief of Capitol Police* (D.C. Cir.) p. 21.

[7] But, as appears *infra*, at least some Members of Congress and some Capitol Police officers differ with Chief Powell as to the correct procedure and the proper standard, and they may also differ with each other.

[8] Defendants suggest that as guests of one or more Members of Congress they were not subject to prosecution under the statute. The Court is not prepared to find that the waiver power granted to the Speaker and the Vice President by section 128 has been delegated by custom and practice to individual Members, particularly when, as here, the Speaker was requested, but refused, to grant a waiver.

[9] The version of the two Congressmen is supported by other evidence. A number of photographs showing large groups of persons on the Capitol steps were introduced. It also appears that, on at least one occasion, when a Capitol Police officer was about to order a group away, he desisted when he learned that a Member of Congress was with them. And a letter from Representative Michael J. Kirwan, chairman of the Democratic National Congressional Committee, advised all Democratic Congressmen that an official photographer would be available on the Capitol steps for four hours daily for photographing Members with groups of constituents.

[10] Thus far, there has been no significant court construction of the Capitol Grounds statute. See *Jeannette Ranking Brigade* v. *Chief of Capitol Police*, 278 F. Supp. 233 (D.C. D.C. 1968), See also, the testimony of United States Attorney David Bress before the Senate Subcommittee on Public Buildings and Grounds, *infra* note 19 (Hearings, p. 8). Thus, the present interpretation is being written on a relatively clean slate insofar as judicial construction is concerned, and there is no impediment to a construction which will save the statute.

[11] ". . . we are of the view that if [the statute] is confined more narrowly than the lower courts confined it, it can be preserved. . . ." (325 U.S. at 100).

[12] Chief Powell testified that in the instant situation—of Quakers reading the names of war dead from the Congressional Record—he would have issued an order to leave even if only a single person, rather than a group, had been involved.

[13] Although Chief Powell used this term in his testimony in delineate the various classes, he candidly acknowledged that "I'm not sure just what the expression 'noncontroversial' is."

[14] According to the evidence, at least one recent group gathering on the Capitol Grounds included someone with an NAACP insignia. Also, as noted *supra*, p. 6, members of the Poor Peoples Campaign were allowed on the Grounds in assemblages.

[15] Unjustifiable discrimination is prohibited by the due process clause. *Bolling* v. *Sharpe*, 347 U.S. 497 (1954); *Shapiro* v. *Thompson*, — U.S. — (1969).

[16] The Department of Justice appears to agree with this interpretation of *Edwards*. In its brief in *Rankin* (see *supra*, note 6) the Department interprets the teaching of *Edwards* to be "that the peaceful petition by non-obstructive small groups may not be abridged by being denominated a breach of the peace" (Br., p. 20). It follows that peaceful petition by non-obstructive small groups may not be abridged by being denominated an unlawful entry.

[17] *Feeley* v. *District of Columbia*, 220 A.2d 325 (D.C. App. 1966) is not to the contrary. The court's conclusion there that the appellants had no right to be present where they were arrested was predicated on a record which did not demonstrate—as the record here does—that other groups were using the Capitol Grounds. Beyond that, the *Feeley* court's comments concerning section 124 were dictum (see *Jeannette Rankin Brigade* v. *Chief of Capitol Police*, note 10, *supra* (278 F. Supp. at 234–35)) and its decision was later reversed. 128 U.S. App. D.C. 258, 387 F.2d 216 (1967).

[18] If section 124 were as broad in its sweep as the prosecution here believes it is, many of the 1967 amendments would have been unnecessary and surperfluous. Indeed, one of the new provisions forbids anyone to "parade, demonstrate, or picket *within* any of the Capitol Buildings" (section 123(b)(7)) (emphasis added), but it is silent with respect to the Grounds.

[19] Hearings before the Subcommittee on Public Buildings and Grounds of the Senate Committee on Public Works on S. 2310, 90th Cong., 1st Sess. (September 21, 1967).

[20] The Senate Committee Report on the 1967 amendments likewise emphasized the necessity for the maintenance of safety and order and the need to prevent "acts designed to impede, disrupt, or disturb the orderly conduct of the Nation's business" (S. Rept. No. 573, 90th Cong., 1st Sess., p. 7).

[21] As the discussion above indicates, the Capitol Grounds statute can be saved from total invalidity only if it is interpreted narrowly, consistently with its original purposes.

[22] In each category, the conduct would have to be more disruptive or more substantial (in degree or number) than that normally engaged in by tourists and others and routinely permitted on the Grounds.

[23] The Court's construction of the present statute is, of course, without prejudice to congressional adoption of more specific standards, such as, for example, those suggested by United States Attorney David Bress during the 1967 hearings (to require permits; specify the times, locations, size, and character of parades, assemblies, picketing activities, and demonstrations; prescribe limitations on the display of signs, banners, flags, or other symbols; and prohibit or limit the use of sound amplifying devices or conduct which may be disruptive of the legislative process or disturbing to the peace and the unique character of the area).

[From the Washington (D.C.) Post, June 20, 1969]

JUDGE RULES OUT BARRING PEACEFUL CAPITOL PROTESTS

(By William N. Curry)

Capitol Police cannot legally break up or arrest small groups of protesters who demonstrate peacefully on the Capitol grounds, the chief judge of General Sessions Court ruled yesterday.

"The Capitol of the United States (is) a national historic shrine and the political centerpiece of the Republic," Chief Judge Harold H. Greene said. "It may not be declared off limits to the people."

The ruling may open the way to unfettered political activity on the Capitol grounds by small peaceful groups.

Judge Greene's ruling came in the case of four Quakers charged with unlawful entry on June 4 when they tried to read a list of Vietnam War dead from the Capitol's east steps. The unlawful entry charge covers refusal to leave when ordered to.

The group was ordered off the steps by Capitol Police Chief James M. Powell because, the chief testified, they did not have a permit to use the steps. They were too controversial to get one from the Speaker of the House, the chief said.

"But under our constitutional system," Judge Greene said, "no public official—executive, legislative or judicial—can have the power to permit or prohibit assembly on property belonging to the people based on his motion of what . . . may be controversial.

"In short . . . the controversiality standard employed by Chief Powell is not compatible with constitutional values and principles," the judges said. "It is impossible of even-handed, impartial and constitutional application."

Therefore, Judge Greene held, if protesters are to be arrested for unlawful entry they must be guilty of something other than being controversial. He suggested the Government rely on the Capitol Grounds Statute, an 1882 law designed to prohibit disruptive activity near the Capitol.

The judge, citing the legislative history of that law, listed the conditions required for prosecution: A group would have to be noisy, violent, armed, disruptive of Congress or a threat to property. The law "could not constitutionally be applied to enforce a policy of keeping off the Capitol grounds groups of persons merely because they are controversial," he said.

The ruling was a victory for American Civil Liberties Union lawyer Ralph J. Temple, who had asked Judge Greene to dismiss the charges. But the judge said he would give the Government a chance to proceed under the Capitol Grounds Statute before dismissing the charges.

Judge Greene's ruling is not binding on other judges but there is a tendency among them to adopt the reasoning of a fellow judge.

U.S. Attorney Thomas A. Flannery said the Government would accept Judge Greene's offer to continue its case at a trial today. The outcome of that proceeding, Flannery said, will determine what the Government will do with the cases of 60 other protesters still awaiting disposition in arrests growing out of a recent series of Capitol demonstrations.

The next day, June 20, the charges against the demonstrators were dropped. I made the following statement at that time, and I would like to include along with it, an editorial from the Monday, June 23, Washington Post:

PRESS RELEASE FROM HON. GEORGE E. BROWN, JR., JUNE 20, 1969

Congressman George E. Brown, Jr., today issued the following statement in respect to the dismissal of charges by Judge Harold H. Greene, D.C. Court of General Sessions, against four members of A Quaker Action Group who had been arrested on the Capitol steps while reading the names of the Vietnam war dead:

I am, naturally, very pleased that Judge Harold H. Greene's opinion upholds the position which I have taken in regard to the reading of the names of the war dead from the Congressional Record on the Capitol steps.

I have previously stated that the Capitol Police had illegally ordered a halt to the reading of the names. I also stated that I felt the group had an absolute Constitutional right to assemble on the steps and to petition the Government for a redress of grievances, as provided in the First Amendment to the Constitution.

I further pointed out that the police were arbitrarily and discriminatorily misinterpret-

ing the law and placing a construction on it that was not appropriate. I asked the Speaker of the House, the Vice President, and the Capitol Police not to make these arrests. I invited the group to assemble on the steps, and I have invited other groups, advising them that I felt they were acting in accordance with their rights under the First Amendment. I had expected that invitation to be honored by the police on behalf of this group as well as for any other group.

I fully agree that there must be limits to the uses to which the Capitol grounds can be put, and wholeheartedly commend Judge Greene's statement that it is in order to bar from the grounds: ". . . any group which is noisy, violent, armed, or disorderly in behavior; any group which has a purpose to interfere with the processes of the Congress, any Member of Congress, congressional employee, visitor, or tourist; any group which has the effect, by its presence, of interfering with the processes of the Congress, any Member of Congress, congressional employee, visitor, or tourist; and any group which damages any part of the buildings, shrubbery, or plant life."

[From the Washington (D.C.) Post, June 23, 1969]

PEACEFUL DEMONSTRATORS

General Sessions Chief Judge Harold H. Greene brought common sense and a healthy respect for American traditions to bear upon the problem of political demonstrations on the Capitol grounds. What place more appropriate than the grounds of the Capitol buildings could be found for an orderly, peaceful effort to influence the judgment of the United States Congress? It is a public place. It is a place where the attention of legislators may be won by demonstrators. It is a logical place for citizens to assemble and to petition their representatives for a redress of what they deem to be grievances.

The test of any demonstration on the Capitol grounds should be its orderliness, not its advocacy. Demonstrators manifestly cannot be allowed to impede the business of Congress in any way, whether by noise or by blocking entrances to the Capitol or to congressional office buildings; nor can they interfere with the legitimate business of other citizens in seeking access to the Capitol. But the Quakers who met quietly on the Capitol steps recently and read aloud the names of war casualties were no impediment to the work of Congress. They were an embarrassment, perhaps, but certainly no threat to the orderly processes of government.

The 1882 Federal statute prohibiting all political demonstrations on the Capitol grounds is more appropriate to a government fearful of its citizens than to a government confident that it reflects their will, Judge Greene was quite right in questioning its constitutionality. He was quite right in resisting attempts by the Capitol Police to prevent orderly protest under vague charges of disorderly conduct. The test of orderliness is not agreement with the prevailing view; the test lies in a resort to reason instead of a resort to force.

(Mr. CLAY (at the request of Mr. BROWN of California) was granted permission to extend his remarks at this point in the RECORD).

Mr. CLAY. Mr. Speaker, since my participation with members of the Quakers on the steps of the Capitol, the courts have, in two instances, determined the Quaker action to be within the bounds of free speech and free assembly, guaranteed by the Constitution. The verdicts clearly indicate that free speech and free assembly cannot be abridged by the Speaker of the House or the President of the Senate.

Mr. Speaker, we must not cloud the issues in frivolous debate over the court decisions. The issues are, first, the rights of Americans to take a stand and to make known their views through both assembly and speech and, second, the reason for standing on the steps of the Capitol is to show the concern for American boys dying in a war which is unquestionably illegal and immoral.

Fears aroused because of the protest threaten to bring about the oppression of all Americans. Certainly, the quiet and responsible protest of the Quakers and their subsequent arrests makes this point more clearly than most incidents which occur daily across the country. Once we start imposing the law as an expedient means to curtail minority activities with which we disagree, we shall soon find the extension of this logic suppressing the activities of the majority. Rights denied one are potentially denied all.

Protest is not new to me, neither are the attempts of Government agents to stifle rightful assembly or speech. What is unique about this protest is that the protesters represent the overwhelming position of the majority in this country. This demonstration points up the concensus in America on the question of the Vietnam war. It points up the very real basis for so many protest activities in the Nation. The powers of a few entrenched Congressmen and strategically placed Government officials have thwarted the will of the people.

I support the Quakers on both counts—their right to assemble and speak and their reason for doing so at this time and place.

My opposition to the Vietnam war is long standing and unaltered. No number of recitations alleging our honor is at stake will shake my opposition. I am convinced that honoring any commitment vaguely implied by past Presidents has been met many times over. I adamantly stress the fact that commitments made to our own people in our own country have been and are being sadly neglected. In my own mind, I cannot find logic in the reasoning whereby we can postpone and/or overlook and underfund commitments to our own people without regard for honor—and at the same time expend billions of the taxpayers' money to honor a Vietnam commitment not clearly understood or accepted by Americans.

I object, Mr. Speaker, to the flag waving which accompanies each escalation of American spending and Americans dying in Vietnam. The emphasis is tragically misplaced. The flag waves over the poor and over the hungry and over the black and over the Quakers—just as it waves over soldiers going into battle. Sadly enough, there are now over 35,000 dead American soldiers over whom the flag waves. What we are saying, what Quakers are saying, and what I am saying, is that the flag should be waving over these boys which might still be enjoying life, were it not for a tragic war from which we should immediately remove ourselves.

And we will, Mr. Speaker, read names on the steps of the Capitol and march in silent vigil to let the powers of this administration know our opposition. Hopefully, this Government will not let more Americans be added to the list of war dead. It is not only our right but our responsibility as American citizens to continue protesting this war.

(Mr. MIKVA (at the request of Mr. BROWN of California) asked and was granted permission to extend his remarks at this point in the RECORD.)

Mr. MIKVA. Mr. Speaker, the Honorable Harold H. Green, chief judge of the criminal division of the court of general sessions for the District of Columbia, recently held that a group of Quakers who had been sitting and/or standing on the Capitol steps reading the names of Vietnamese war dead could not be lawfully arrested for that activity. Those of us who have been concerned about the arrests of these Quakers for such activities were gratified by the decision, but not surprised. Indeed, as the court pointed out, it would be surprising instead if the Capitol steps and the Capitol Grounds were held to be off limits to all first amendment activities which the arrests seemed to suggest.

The activities of the Quakers for which they were arrested and the activities of the Congressmen for which they were not arrested cannot be construed to be civil disobedience. What was being challenged in a traditional constitutional American way—was the imposition of an unlawful restraint of fundamental freedoms. Such a challenge can never be civilly or criminally disobedient and that distinction must always be preserved.

On the other hand, merely reciting the words "First Amendment" as some kind of incantation does not automatically protect all activities for which groups might seek to use the Capitol Grounds. What is involved is a classic case where rights may be in conflict. The job of government, and in this instance the officials who have jurisdiction over the Capitol Grounds, is to provide reasonable regulations which will order those rights to avoid the conflict. The ingenuity of our constitutional system has been that that marvelous document allows a full measure of freedom without ever leaving us helpless against chaos or disorder.

Specifically, regulations governing the Capitol Grounds ought to allow the exercise of any first amendment rights that do not preclude visitors to the Capitol from exercising their rights and that do not interfere with the business of the Nation which is to be conducted by Congress. Under such a formula for regulation, the right of the Quakers to sit in a small group on the steps of the Capitol and, without the use of a bullhorn or other amplifying device, recite the names of the war dead in Vietnam, in no way interferes with the rights of a visitor to enter the Capitol, without being accosted or offended

Nor does it interfere with the right and duty of Congress to carry on the Nation's affairs. Indeed, the protection of such a right in no way interferes with the right of the John Birch Society to quietly sit in another small group in another portion of the Capitol Grounds and read the names of the Quakers and their allies who they consider to have poor judgment in the matter, or worse.

I have taken the liberty to include at the end of these remarks a suggested set of guidelines or regulations, set within the present statutory framework, and

which would resolve these rights in conflict; obviously they are nonexclusive suggestions. However, they uphold both the Constitution and the necessity for supervising the Capitol Grounds. That duality is one that the court decision makes clear applies to the Capitol Grounds and the Quakers just as much as it does to a private home and a high school graduating class. Neither the uniqueness of the Capitol Grounds nor of the business that is transacted here can be allowed to trump those precious first amendment rights which helped to create that uniqueness in the first place.

GUIDELINES FOR THE PUBLIC USE OF THE CAPITOL GROUNDS

(Pursuant to 40 U.S.C. §§ 193j and 193k, and D.C. Code §§ 9–128 and 9–129)

Section 1. General. In order to admit of the due observance within the United States Capitol grounds of occasions of national interest becoming the cognizance and entertainment of Congress, pursuant to 40 U.S.C. §§ 193j and 193k and D.C. Code §§ 9–128 and 9–129, there are hereby established the following Guidelines for suspension of the prohibitions against use of the Capitol Grounds set forth in 40 U.S.C. § 193g and D.C. Code § 9–124.

Section 2. Scope and administration of guidelines.

(a) The exercise by the people of their right to assemble and to petition the Government for redress of grievances is recognized to be an occasion becoming the cognizance of Congress. Prohibitions against the use of the Capitol grounds will, therefore, be suspended as provided in section 3 of these guidelines for the purpose of orderly exercise of these rights, except when necessary to insure the following:

(1) to the members of Congress, their staffs and the remainder of the public their normal, unencumbered access to the public grounds, and

(2) to Congress the ability to transact its business and perform its constitutional function in a dignified and orderly manner, free from interference.

(b) The scope of 40 U.S.C. 193g, D.C. Code § 9–124 is limited to acts or conduct that interfere with the safety or normal function of the Congress, individual legislators, staff members, or visitors, or which threaten their right to be free from intimidation, undue pressure, noise or inconvenience.

(c) These guidelines shall be administered without regard to race, color, creed, national origin, or political viewpoint or affiliation.

Section 3. Suspension of prohibitions. The prohibitions contained in 40 U.S.C. § 193g, D.C. Code § 9–124, are hereby suspended (pursuant to 40 U.S.C. §§ 193j and 193k, D.C. Code §§ 9–128 and 9–129) during all hours at which the Capitol building is open to the public, subject to the following conditions:

(a) No person shall willfully destroy, damage, or remove property or any part thereof;

(b) No person shall use loud, abusive, or otherwise improper language, engage in unwarranted loitering or sleeping, create any hazard to persons or things, improperly dispose of rubbish, spit, commit any obscene or indecent act, engage in unseemly or disorderly conduct, throw articles of any kind from a building, or climb upon any part of a building;

(c) No person shall petition on the grounds while under the influence of intoxicating beverages or narcotic drug, or consume such beverage or use such drug while using the grounds;

(d) No person shall solicit alms or contributions, engage in unauthorized commercial soliciting and vending of any kind, distribute commercial advertising, or collect private debts on the grounds;

(e) No person shall obstruct the roads and walkways on the grounds in such a manner as to hinder their proper use, including the blocking of entrances, driveways, walks, streets, loading platforms, or fire hydrants;

(f) No person shall distribute pamphlets, handbills, or flyers, or display any banner, flag, or other such device within the area bounded by the following line: beginning at a point on the northeast corner of Independence Avenue and First Street, S.W., thence north to a point on the southeast corner of Constitution Avenue and First Street, N.W., thence east to a point on the southwest corner of Constitution Avenue and First Street, N.E., thence south to a point on the northwest corner of Independence Avenue and First Street, S.E., thence west to the point of beginning;

(g) Assemblages may be limited to forty persons when at any time they occur within fifty feet of any road, entrance, driveway, walk, loading zone or fire hydrant;

(h) Assemblages may be limited to a minimum of one hour when necessary to protect the dignity and decorum of the Capitol and to insure that other groups then present in the area shall have the opportunity peacefully to exercise their right of assembly on the grounds without thereby causing interference with the normal safety and function of Congress, individual Members, staff, or visitors.

Section 4. Powers of revocation and enforcement.

(a) Those officials authorized by 40 U.S.C. §§ 193j and 193k, D.C. Code §§ 9–128 and 9–129, to suspend the prohibitions on use of the Capitol grounds have the power to revoke the suspension described in Section 3 of these guidelines when there is cause to believe that any of the conditions outlined in subsections 3(a) through 3(h) will be or is being violated.

(b) The Capitol Police have the power

(1) to enforce the conditions outlined in subsection 3(a) through 3(h) of these guidelines; and

(2) to enforce the prohibitions contained in 40 U.S.C. § 193g, D.C. Code § 9–124, upon proper revocation of the suspension authorized by section 3 of these guidelines.

Mr. KOCH. Mr. Speaker, for the last 7 weeks a group of Quakers have assembled on the steps of the Capitol to read from the CONGRESSIONAL RECORD the names of American soldiers killed in Vietnam. They were joined from time to time by six Congressmen. I believe it fair to say that the Congressmen there assembled were in full accord with the sentiments of the Quakers whose purpose was to bring to the attention of the American public in a dramatic way that the war in Vietnam continues.

While I was in accord with their purpose, I supported their readings for the even more important reason of defending the rights guaranteed to all of our citizens under the first amendment, namely, the rights to peacefully assemble and petition the Congress for a redress of grievances.

The Capitol Police arrested more than 60 Quakers. It should be noted that some of them served—including a young woman—8 days in jail. Though in error, the arrests on the part of the Capitol Police were made in good faith and I want to commend Chief Powell for the way they did it.

But a lesson should be learned. One must distinguish between those who engage in peaceful protest and those who use violent methods and it is a great disservice to this country and to the cause of peaceful change to lump them together. It is particularly important in times of ferment, and surely we are living in such a period, that the channels of communication permitting peaceful change be safeguarded. If the Government is to be responsive to the will of the people and their need and demands for orderly change, we must preserve, without abridgment, the constitutional rights of free speech, free press and free assembly so as to maintain the opportunity for free and meaningful political discussion. As the Supreme Court has said:

> Therein lies the security of the Republic, the very foundation of constitutional government.

How meaningful in retrospect was the presentation of the Quakers in reading the names of the American war dead. It proceeded by 6 weeks a comparable use by Life magazine not of the names but of the pictures of those American soldiers who died in 1 week. Those pictures filled 11 pages of Life magazine dated June 27.

When I served in the U.S. Army from 1943–46, and part of that time in Germany, I often asked the question of Germans whom I met how it was that they could stand by and see the democratic process which existed before Hitler in Germany slowly destroyed. It did not happen overnight. Jews, Jehovah's Witnesses, Catholics, Protestants, and trade unionists who were ultimately led to the concentration camps were not dragged there the day after Hitler assumed power. No. It was a step-by-step escalation. Why did they not jointly protest? Invariably, the reply was "What could I do, I am just a small man—der kleine mann—and could do nothing." Yet in retrospect, if they had stood up at the beginning when the limitations were starting on the right to free speech it never would have reached the point when they would have been powerless to undertake any action.

I do not for a moment suggest that the United States should be compared with Nazi Germany even at its earliest stage. But what I do suggest is that we must never stand by and let an abridgment of those fundamental rights which all of us treasure to take place. Rather we must rush to defend the constitutional rights of others. For in defending them, we defend ourselves.

The courts of this country have played a great role in preventing the executive and legislative branches of our Government from usurping rights guaranteed to our people and last week in Washington, D.C., Judge Harold H. Greene, of the District of Columbia Court of General Sessions, added to that tradition by his opinion.

The court's decision is one more historic example of the courageous witness of the Quakers. But it is more than a Quaker victory. It is a victory for all of the citizens of this country.

May I add one postscript. Some have been critical of Congressmen participating in the Quaker assemblies. As a Congressman, I swore to support and defend the Constitution of the United States. I can think of no better place to do just that than on the steps of the Capitol.

GENERAL LEAVE TO EXTEND

Mr. BROWN of California. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to extend their remarks on the subject of my special order.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

WIFE'S APPEAL FOR HELP TO VISIT LT. COL. JAMES LINDBERG HUGHES, PRISONER IN NORTH VIETNAM

The SPEAKER pro tempore. Under a previous order of the House the Chair recognizes the gentleman from New Mexico (Mr. LUJAN) for 5 minutes.

Mr. LUJAN. Mr. Speaker, a young wife and mother of Santa Fe, N. Mex., whose husband has been a prisoner of war in North Vietnam for more than 2 years, has issued a worldwide appeal for help in obtaining permission to visit her husband, Lt. Col. James Lindberg Hughes, in his prisoner of war camp behind the enemy lines.

I rise to implore my colleagues to lend their sympathetic support to Mrs. Hughes and to urge the cooperation of the State Department, the Defense Department, the President, and the leadership of North Vietnam in making it possible for her to do this.

Mr. Speaker, the people of America and of the world have been sickened by the reported barbaric and inhuman treatment of our captured fighters. Held incommunicado with no contact by the International Red Cross, no mail to or from their families, these men languish in a situation reminiscent of the Dark Ages. As far as they are concerned, the rules spelled out in the Geneva Convention on the treatment of prisoners of war do not exist.

Today, with the first dim rays of peace visible on the horizon, the thread of human sympathy that binds all of the peoples of the world pulls at our hearts and calls for a single, stirring act that will demonstrate to all humanity that man's compassion for man is still alive.

As the military forces of both sides scale their efforts to the progress of our diplomats at the peace table; as the people of North and South Vietnam join Americans in a common hope for honorable settlement of the conflict; as the leaders of the warring nations seek to demonstrate their sincerity in pursuit of this settlement, might not both sides now join in a common act of kindness that will accomplish more than 10,000 words in demonstration of that sincerity?

By permitting Mrs. Hughes to visit not only her husband but the husbands of scores of other grieving American wives, the North Vietnamese would take a long step toward convincing the world of their avowed concern for the future brotherhood of man. This single, simple act would reassure millions of wives and mothers around the world in their faith that we are, indeed, bound by a kinship of humanity that is greater than hate, more powerful than fear, more compelling than politics and paramount to the mutual cruelties of war.

In urging my colleagues to support Mrs. Hughes in her plea, I must emphasize that her request in no way represents a weakening of the resolve of our people in support of our national interests in Vietnam. On the contrary, Mrs. Hughes has repeatedly expressed her pride in her husband's military service to his country, her personal loyalty and belief in the cause for which he and his comrades are fighting, and her determination to remain true to the faith and patriotism that took them to war.

The granting of her request to represent all American wives and mothers on this compassionate pilgrimage would do no damage to America's interests nor to the interests of the enemy. It would strike only at the loneliness, the fears, the apprehensions and heartache of all the families of all prisoners of war, giving them a ray of hope and reassurance to cling to as both sides warily walk the road toward peace.

I ask the support of the Members of this House for this cause. I urge all neutral nations to heed the sentiments of this Chamber and to act as intermediaries with North Vietnam for Mrs. Hughes to visit her husband and other American prisoners of war as a nonpolitical, nonmilitary, nonideological deed of basic human kindness.

Mr. Speaker, under unanimous consent, I insert in the RECORD the text of Mrs. Hughes' letter in which she requests the assistance of our Government in her cause.

OPEN LETTER TO THE MEMBERS OF CONGRESS

The unawareness of the citizens of the United States and the seeming indifference of countries all over the world to the special plight of the prisoners-of-war being held captive in Vietnam is heartbreaking. This is especially compounded for families who have children growing without fatherly guidance.

These forgotten men in Vietnam who fought loyally for their country have become trapped in a tragic diplomatic crossfire. They can't be helped by our country—and, they won't be helped by North Vietnam. There is no free flow of mail between families. It has been four years for some families who only know the cryptic words "missing in action." There are no available lists of prisoners and very little contact with the outside world.

All that the families can do is to wait—patiently—which we have done in our case for more than two years—waiting for something to happen. But, nothing has, and we have come to a point where we feel that the world must be alerted and asked to participate in this problem. Help must come from neutral sources and impartial groups for these neglected Americans. People with hearts—outside the sphere of this political conflict—must come forth to offer assistance. These men, most of them pilots, are but innocent victims of a bad situation.

I implore that some neutral country intercede in behalf of the wives and families of the prisoners. People with sympathy in their hearts can accomplish miracles, and I truly feel that there are people such as this all over the world who are not aware of the plight of these men and the anguish caused their families by the insensitivity surrounding the problem. I am prepared to journey to Hanoi tomorrow as a wife and mother if this were allowed by the North Vietnamese and permitted by our own government.

I believe sincerely that even the people in North Vietnam realize that family ties are the same the world over, and I cannot feel they would ask less for their own people. If they were approached by an impartial nation, in behalf of the American families, they could not help but allow things they would want for their own people . . . the release of sick and wounded prisoners, free flow of mail between families, acknowledgment of lists and status of prisoners, and ultimate release of all prisoners on purely humanitarian grounds.

I would hope that the Congress of the United States would accept the challenge of this request and work along the lines I have suggested in hopes that it would evoke a favorable response from a sympathetic nation who might peruse the facts with the thought that "but for the grace of God, this could be me."

INTRODUCING THE NATIONAL KIDNEY DISEASE ACT

The SPEAKER pro tempore. Under a previous order of the House the Chair recognizes the gentleman from Pennsylvania (Mr. BIESTER).

Mr. BIESTER. Mr. Speaker, along with 79 cosponsors, I am introducing the National Kidney Disease Act, which is designed to provide a comprehensive approach to planning and implementing a national program for the treatment of kidney disease. The prime purpose of the bill is to encourage cooperative arrangements in the field of kidney disease to secure for patients the latest advances in diagnosis and treatment.

Kidney disease is one of our Nation's most widespread afflictions. Recently a group appointed by the Surgeon General estimated that over 7 million Americans suffer from kidney-related diseases and 100,000 deaths per year are caused by it.

While two life-saving techniques have been developed which could save the lives of 10,000 medically suited kidney patients—kidney transplantation and the kidney machine, less than 5 percent of these patients are receiving treatment and the sole reason is lack of funds.

Treatment expense is high—between $10,000 and $14,000 per patient per year in a hospital dialysis center. These costs can be reduced if treatment is carried out in the home.

But what is the cost to society if we do not offer these lifesaving treatments? Who knows what contributions would have been made by the individual who died, because he did not have the use of a kidney machine?

Should any physician be forced to choose among his patients as to who shall receive the lifesaving treatments? Or should he have the opportunity of offering these treatments to all of his patients who might benefit, but who surely will die within a matter of weeks without them?

In today's affluent society there should be means to provide needed training facilities, treatment centers, specialized professional personnel, and even the costs of necessary equipment and supplies for patients to treat themselves in their homes.

Artificial kidney machines have been in use in this country since 1946. On March 9, 1960, Dr. Belding Scribner of Seattle, Wash., placed the first patient with kidney failure on chronic maintenance hemodialysis. This individual is still living without the use of his kidneys.

The first kidney transplant in man was performed in 1936, 31 years before the

recent remarkable achievement of the first attempted heart transplant.

Yet now, in 1969, 33 years later, we are treating less than 5 percent of the ideal kidney patients using the strictest medical selective criteria, and a much smaller percentage of the total potential patients.

I believe it is time for the Congress to give immediate consideration to legislation providing for a comprehensive approach to kidney disease. I consider this as one of the most pressing health problems in the United States, because we can and must take advantage of the fantastic discoveries of medical research to provide the proven lifesaving treatment to the sufferers of kidney disease. Failure to take this step would be a demonstration of the performance gap, that gap which lies between our known and proven capability and our inadequate performance.

The same bill has been introduced in the other body by Senators JACOB K. JAVITS, Republican, of New York, HENRY JACKSON, Democrat, of Washington, WARREN G. MAGNUSON, Democrat, of Washington, and other cosponsors.

JOE McCAFFREY, 25 YEARS AS A CORRESPONDENT ON CAPITOL HILL

(Mr. PRICE of Illinois asked and was given permission to extend his remarks at this point in the RECORD.)

Mr. PRICE of Illinois. Mr. Speaker, this month marks the 25th anniversary of Joe McCaffrey's career as a press, radio, and television correspondent on Capitol Hill. One of the Capitol's most favorite people, Joe McCaffrey effectively conveys his solid grasp of the essence and feel of Congress in his insightful radio and television commentaries to the public.

It has been my great pleasure to have been able to follow Joe's quarter of a century work in covering congressional activities. I not only have enjoyed listening to his evening reports over radio and television through those years, but I have treasured the fact that through his long period I have had the opportunity to have frequent association with him.

As a former newspaper reporter and as one who has been in Congress during the same period Joe McCaffrey has been on the Hill, I think I am qualified to judge his record. Joe approaches his work with an objective point of view, always stressing the necessity of accuracy in reporting the news he relays to his listeners. He has always been impartial and fair minded in his treatment of the news.

Joe McCaffrey has always respected the trust and confidence Capitol Hill has placed in him. He has always respected the obligations and responsibilities of being a reporter and commentator. He is proud of his profession and he has brought additional honors to it.

Joe McCaffrey would be a valuable man to our educational systems throughout the country in teaching students about the legislative process, its people, and its institutions. No one is more expert in the field. I have always been impressed with his intimate working knowledge of Congress and his thorough understanding of the substantive issues involved—issues that he must know so well to properly serve the people who daily wait for his reports. No commentator recognizes more than Joe McCaffrey does the heavy responsibility that falls on him in keeping the people informed through objective, unslanted reporting of the news.

I am proud to join Joe McCaffrey's legion of friends in saluting him on his 25 years of great reporting as a Washington correspondent.

MISUSE OF PRIVATELY HELD GOVERNMENT PRODUCTION EQUIPMENT

(Mr. PODELL asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. PODELL. Mr. Speaker, a significant number of Government contractors are using Government-owned equipment, originally leased for use on Government projects, for private commercial production. According to a recent study by the General Accounting Office, this is being done without either knowledge or consent of the Government. Further, there is no adequate reimbursement being made to the Government for such use. This clearly violates intentions of the original practice of permitting businesses to use high-cost Government equipment for Federal top-priority defense projects. Use of such equipment for private commercial purposes gives these contractors an unfair advantage over industrial competitors who do not receive this taxpayer-supported benefit.

Over a year ago, it was estimated that nearly $15 billion worth of federally owned test equipment, tools, materials, and production equipment was in private hands. Production equipment alone was worth over $2.5 billion. Many major military contractors, especially those doing over half their business with the Government, could easily afford to purchase Government equipment they hold and use.

A bill was introduced in the 90th Congress to bring about improvements in Government management of privately held Government equipment. The Defense Department took steps of its own to improve its administrative oversight of this equipment. However, there is still a lack of firmly established guidelines and regulation which would apply not only to the Defense Department, but to all Government agency contractors. Senator PROXMIRE reintroduced the bill in this Congress to provide for these rules.

Today I am introducing in the House a companion measure. My bill would establish a number of requirements that are essential if further waste is to be avoided in use of Government-owned production equipment. It prohibits placing of federally owned production equipment into the hands of private contractors unless: First, it is set aside for strictly controlled emergency use as part of an overall mobilization plan; second, the contractor is a small business so defined by the Small Business Administration; or, third, the contractor's needs are so urgent that they cannot be met any other way. It provides for a uniform rental system with inventory records to be kept by contractors, and prompt return of equipment upon completion of work.

In addition, it provides for sale of production equipment on a negotiated sale basis to contractors already holding it. Finally, the bill provides for annual reports to Congress on all decisions placing in private hands equipment originally worth over $10,000. In order to guard against abuse in sales procedures, reports to Congress would also be required on sales of all equipment originally worth over $25,000.

By placing strict controls on Government production equipment now in private hands, we would be setting a precedent for further legislation providing overseeing of other federally owned equipment worth billions of dollars.

Mr. Speaker, misuse of Federal property under Government contract must be curbed. More stringent oversight is required on the part of any Government agency administratively responsible for such equipment.

POLITICS AS THE ART OF THE IMPOSSIBLE

(Mr. BRADEMAS asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. BRADEMAS. Mr. Speaker, on June 1, 1969, I had the pleasure of hearing the distinguished Assistant to the President for Urban Affairs, the Honorable Daniel P. Moynihan, deliver the principal address at commencement exercises at the University of Notre Dame in the congressional district which I have the honor to represent. Dr. Moynihan was awarded an honorary doctor of laws degree on this occasion.

Because I believe that many Members of Congress will find Dr. Moynihan's address on this occasion both thoughtful and provocative, I insert it at this point in the RECORD:

POLITICS AS THE ART OF THE IMPOSSIBLE

I take for my theme a sentence from Georges Bernanos "The worst, the most corrupting of lies are problems poorly stated."

My charge is similar. It is that much of the intense difficulty of our time is in nature conceptual, and that it arises from a massive misstatement of our problems. Intellectuals, if this view is correct, have done their work badly and there is little prospect that their mistakes will soon be undone. As ours was perhaps the first society consistently to expect the future to be better than the past, the apprehension that we may have profoundly mistaken the nature of our difficulties, so that we must expect years of effort to resolve the wrong problems and in presumedly unavailing ways, strikes with special force. A certain nostalgia arises for a future that now appears lost. It becomes necessary to live much more in the present than has been the American mode.

If this be no great pleasure, it can, nonetheless, be stimulating. Here a sub-theme can be taken from another alert Frenchman—when asked what he had done during The Terror, the Abbe Sieyes answered, "I survived." This must now be a very great concern of those Americans whose lives, in Midge Decter's formulation, are devoted to the direction of their thought. Anyone old enough to have had any intellectual contact with the 1930's will take my meaning. The men of both the left and right who dominated, even terrorized, *that* time lived in-

tense but brief lives. Their intellectual corpses are still stacked in the odd corners of universities, government departments, and the like where they do whatever it is they do. No one much cares, for they were subsequently judged to have been appallingly wrong about American society and, worse, were seen to have been unforgivably intolerant of any who hesitated to embrace their all-encompassing credos. Archibald MacLeish has remarked of his fellow poets that: "There is nothing worse for our trade than to be in style." The equivalent for those whose concern is government is submission to the noisiest problems of the moment to the exclusion of the most important ones.

What then are the "problems poorly stated" of our time? They are various but have, it seems to me, a unifying characteristic; namely, the rejection by those seeking a more just, more equal society of any indications that the society is in fact becoming more just and more equal. Society is seen in historical terms: what is not altogether acceptable is altogether unacceptable; gradations are ignored and incremental movements are scorned. Those who by disposition are incrementalists, or for whom the contemplation of society has led to a conviction that incremental change is a necessity not a choice in human affairs, are baffled by this attitude and resentful of it. The exchanges that follow are bitter and unproductive. It is at all events my view that this is so because the problems at issue have so far been defined in fairly traditional political terms when what in fact is at issue is an immense stirring, little understood, if indeed understandable, of cultural dimensions. Fundamental ethical and moral issues—religious issues—are involved: issues which politics, especially the politics of a liberal democracy, are uniquely unable to resolve.

Two years ago, in the Phi Beta Kappa oration at Harvard, I argued that in fact we were witnessing the onset of the first heresies of liberalism. Heresy is an unloved term, especially in a liberal society, but it has real meaning: the rejection of beliefs fundamental to the dominant, pervasive world view of the society involved. Of necessity, the heresies of liberalism would be procedural in nature, for it is in process that a liberal society defines itself. In thinking about the subject, I have not been able to get much farther than this, but neither have events moved so as to cast greater doubt on the thesis than that which must attend any such large assertion. To the contrary, the rejection of the *authority* of liberal processes, the code that holds it is bad form to club the Dean, that civic statutes must be abided by, that rules of order and civility will be followed at meetings—all that—continues apace, and the pace if anything quickens. As Robert A. Nisbet continues to remind us, when authority relations collapse, power relations take their place; and this process, too, has advanced. Violence, which is the means by which power relations are maintained, is considerably more widespread now than it was two years ago, and surely vastly more common at the end of the decade of the 1960's than it was at the beginning of it.

Nothing suggests that the pattern of former times will quickly reassert itself. To the contrary, the indications are that we rose to a new plateau of internal violence in the mid-1960's and that the most we can hope for is to keep from yet another escalation.

Such violence has, of course, made its way onto university campuses and this has led to great apprehension for the future of academic freedom. There are analogues, indeed precedents, for the violence of the streets, the poor, the police, and suchlike. But nothing like the present pattern of threats to and actual assault on university institutions and university members has ever yet occurred. Here, in particular, it would seem a future has been lost to us.

This has led to great despair among academic intellectuals: far greater than the news media have yet let on. For probably the first time in our history, professors speak of going into exile. Nor is the alarm simply that of Bourbons. A Marxist historian such as Eugene Genovese speaks with not a little alarm of the "pseudo-revolutionary middle-class totalitarians . . . of the left wing student movement", and one learns that even Professor Marcuse has suggested that professors ought to be treated differently from the oink-ish common swine.

The strongest view, from a notably unhysterical pen, is the recent assertion by Arnold Beichman, writing in *Encounter*, to the effect that university faculties "have quietly decided that for the foreseeable future the university is no longer a place where truth is to be pursued. What has been tacitly ratified is a decision that the American university is primarily (not secondarily) the springboard for upward social mobility as the ascriptive right for ethnic minorities."

This can be overdone. Beichman accurately (but almost alone in the flood of commentary) notes that ethnic mobility has always been a prominent component of higher education—certainly so from the time Catholics began to establish competitive institutions with Protestants. One recalls Yeats' letter of 1904 to Lady Gregory:

"I have been entirely delighted," he writes, "with the big, merry priests of Notre Dame, all Irish and proud as Lucifer of their success in getting Jews and non-conformists to come to their college and of the fact that they have no endowments."

One recalls far more vividly growing up in New York City in the poverty-ridden 1930's, and yet possessing in that Notre Dame football team a symbol of tribal might and valor that can stir the blood atingle to this day. O, the golden Saturday afternoons when, in the name of every Irish kid caught in the social wreckage of the eastern slums, thunder indeed shook down from the skies and those mighty Polish tackles swamped the Navy . . . !

If the demands of newer groups come as a shock to some, it is at least in part because this group function of higher education has tended to be ignored by those groups for which it has been functioning. Yet, the role was obvious enough; and it was not less clear that it would become, if anything, more pronounced to the degree that universities become more central institutions of the society. In the concluding paragraph of *Beyond the Melting Pot*, Glazer and I wrote that: "Religion and race define the next stage of the American peoples." We were not wrong, and one is mystified still that the proposition was viewed at the time by such skepticism on the part of so many. (Not a few of whom, it may be added, having become committed to ethnic studies, pursue the matter with a single-minded zeal that is notoriously the accompaniment of sudden religious conversion.)

Simultaneously, if somewhat incompatibly, universities have been mini-bastions of class privilege. This phenomenon has been evident enough in the insistance by almost all parties to intramural disputes that those involved are exempt from punishment for deeds that would send lesser persons—without the walls—to court at very least and prison in all likelihood. But again, this is nothing new.

Indeed, some good could come of this if the excesses of the moment were to serve to restore some perspective on just what universities are and what they can do. They are institutions inhabitated by younger and older persons of often very great abilities, but usually of very limited experience. With respect to their individual specialties, the judgment of the professors is singularly valuable. But their collective judgment is no better—could, indeed, be worse—than that of the common lot of men. This is not an incidental, random fact; it is a fundamental condition of human society, and the very basis of democratic government.

When William F. Buckley Jr., wrote that he would far rather entrust his governance—by which he would include the preservation of his civil liberties and his intellectual freedom—to the first hundred persons listed in the Boston telephone directory than to the faculty of Harvard College, he was saying no more than what Thomas Jefferson or Henry Adams would have thought self-evident. The remark was greeted with considerable derision in Cambridge at the time, but it may be stated with certainty that more than one tenured professor of that ancient institution has come of late to see its truthfulness with excruciating clarity.

All this is to the good. What is bad is that the diffusion of violence to the intellectual life of our society is likely to lead to even greater failure to correctly state our problems than has been the case to date. This is so for the most elemental of reasons. Intellectual freedom in the American university has now been seriously diminished. It is past time for talking about what might happen; it has happened. We would do well to clear our minds of can't on that subject. Especially in the social sciences, there is today considerably less freedom than there was a decade ago; and we should expect that it will surely be ten to twenty years before what we would hope to be a normal state will be restored.

I deem it essential that this almost suddenly changed situation be more widely understood; otherwise, the sickness of the time will gradually come to be taken for a normal condition of health—and that would be a blow not merely to the age, but to the culture. But if we do perceive our circumstance for what it is, if we do come to accept that for reasons of prudence, or cowardice, or incompetence or whatever, faculties have been everywhere allowing principles and men to be sacrificed, we will at least retain the understanding that something has gone wrong, something that it may be possible someday to right.

It is important then to survive, with our faculties, as it were, as little diminished as possible, and to seek to understand the times—which is to say to state the problems of the time correctly.

Few individuals can hope to contribute more than a small increment to this effort; but more, then, is the reason as many as possible should seek to do so. Hence, with less hesitance than might otherwise attend the effort to make a simple abstraction about a hopelessly complex reality, I would offer, from the world of politics, the thought that the principal issues of the moment are not political. *They are seen as such:* that is the essential clue to their nature. But the crisis of the time is not political, it is in essence religious. It is a religious crisis of large numbers of intensely moral, even Godly, people who no longer hope for God. Hence, the quest for divinity assumes a secular form, but with an intensity of conviction that is genuinely new to our politics.

It is important to be clear whence this peculiar secular moral passion arises. It is from the very eighteenth century enlightenment from whence arose the American civilization that has so far followed so different a course. The rejection of Christian religion by the Enlightenment has obscured the fact, especially to Christians, that it did not constitute a rejection of Christian morality. To the contrary, it was more often in the name of that morality that the creed was attacked. It was Rousseau, as Michael Polanyi argues (although others would disagree) whose work widened the channels of Enlightenment thought so that in fact "they could be fraught eventually with all the supreme hopes of Christianity, the hopes which rationalism had released from their dogmatic frameword." Wherewith, supreme of ironies, was loosed upon the world a moral fury that has wrought as much evil, in contrast with the mere brutality of the past, as mankind has ever known, an evil which may yet

destroy us. The process arises from a sequence of premises which are logically unassailable, yet which in practice produce a society that is inherently unstable. Polanyi states the argument, which he correctly observes, no one has yet answered:

"If society is not a divine institution, it is made by man, and man is free to do with society what he likes. There is then no excuse for having a bad society, and we must make a good one without delay. For this purpose you must take power and you can take power over a bad society only by revolution; so you must go ahead and make a revolution. Moreover, to achieve a comprehensive improvement of society, you need comprehensive powers so you must regard all resistance to yourself as high treason and must put it down mercilessly."

Repeatedly, as this fervor becomes pathological, a kind of inversion takes place which transforms violence from a means to an end to an end in itself. There are surprises but few mysteries to this process: the nineteenth century was able to read it in Russian novels; the twentieth to watch it on film. It has been the great disease of the committed intellectual of our time. Thirty years ago, Orwell wrote that: "The common man is still living in the mental world of Dickens, but nearly every modern intellectual has gone over to some or other form of totalitarianism." For that is the correct term. The total state; the politicization of all things. It would seem that Britain and America managed in the nineteenth century to escape any deep infestation of this view mostly by not thinking too closely about politics. But one result of this is that in political theory there is no serious counter argument: all one can say is that one does not like doing good by sending men "up against the wall" to use the apparent term of Che Guevera and the battle cry of the Barnard girls. For the disease is amongst us, and will spread. Incongruously, it appears to have taken roots within organized religion itself. The course of the coming generation is all but fixed: it will include a strong and possibly growing echelon that will challenge the authority of American institutions across the board, and will not be especially scrupulous as to how it does so. In this the extreme left is very likely to be joined by the extreme right, for to each the values and process of the present American democracy are the enemy to be destroyed.

All in all, there is cause enough for despair. As Midge Decter has put it: "When you are caught between left and right, the only way to go is down." But we are not yet down. We are a strong and competent people, increasingly, I think, aware of our troubles and dangers and shortcomings. The challenge to authority that is now upon us can strengthen and renew institutions as much as it can weaken them. And it can be fun. There is always room, as Orwell wrote, "for one more custard pie." We are not especially well equipped in conceptual terms to ride out the storm ahead, but there are things we know without fully understanding, and one of these is the ultimate value of privacy, and the final ruin when all things have become political.

Having through all my adult life worked to make the American national government larger, stronger, more active, I nonetheless plead that there are limits to what it may be asked to do. In the last weeks of his life, President Kennedy journeyed to Amherst to dedicate a library to Robert Frost and to speak to this point. "The powers of the Presidency," he remarked, "are often described. Its limitations should occasionally be remembered."

The matter comes to this. The stability of a democracy depends very much on the people making a careful distinction between what government can do and what it cannot do. To demand what can be done is altogether in order: some may wish such things accomplished, some may not, and the majority may decide. But to seek that which cannot be provided, especially to do so with the passionate but misinformed conviction that it *can* be, is to create the conditions of frustration and ruin.

What is it government cannot provide? It cannot provide values to persons who have none, or who have lost those they had. It cannot provide a meaning to life. It cannot provide inner peace. It can provide outlets for moral energies, but it cannot create those energies. In particular, government cannot cope with the crisis in values which is sweeping the western world. It cannot respond to the fact that so many of our young people do not believe what those before them have believed, do not accept the authority of institutions and customs whose authority has heretofore been accepted, do not embrace or even very much like the culture that they inherit.

The twentieth century is strewn with the wreckage of societies that did not understand or accept this fact of the human condition. Ours is not the first culture to encounter such a crisis in values. Others have done so, have given in to the seeming sensible solution of politicizing the crisis, have created the total state, and have destroyed themselves in the process. Irving Kristol has warned against it in terms at once cogent and urgent:

"The one way not to cope with this crisis in values is through organized political-ideological action. Most of the hysteria, much of the stupidity, and a good part of the bestiality of the twentieth century have arisen from efforts to do precisely this. Not only do such efforts fail; they fail in the costliest fashion. And if modern history can be said to teach anything, it is that, intolerable as a crisis in values may be, it invariably turns out to be far less intolerable than any kind of 'final solution' imposed by direct political action."

I surely do not argue for a quietistic government acquiescing in whatever the tides of fortune or increments of miscalculation bring about: and in our time they have brought about hideous things. I do not prescribe for social scientists or government officials a future of contented apoplexy as they observe the mounting disaffection of the young. I certainly do not argue for iron resistance, as other societies have successfully resisted somewhat similar movements in the past.

I simply plead for the religious and ethical sensibility in the culture to see more clearly what is at issue, and to do its work.

Sympathy is not enough. *Tout pardonner, c'est tout comprendre* is not a maxim that would pass muster with Bernanos or any who have helped us through the recent or distant past. If politics in America is not to become the art of the impossible, the limits of politics must be perceived, and the province of moral philosophy greatly expanded.

WHAT IS HAPPENING ON OUR CAMPUSES?—AN ARTICLE BY ROBERT H. WYATT, EXECUTIVE SECRETARY, INDIANA STATE TEACHERS ASSOCIATION

(Mr. BRADEMAS asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. BRADEMAS. Mr. Speaker, one of the most vigorous champions of education in my own State of Indiana is Robert H. Wyatt, executive secretary of the Indiana State Teachers Association. Mr. Wyatt, who is a former president of the National Education Association, recently published an article entitled, "A Look at the Universities—What Is Happening on Our Campuses?" in the summer 1969 issue of the Indiana Teacher.

I believe that Members of Congress will read with much interest the views of this distinguished educational leader, and I insert his article at this point in the RECORD:

A LOOK AT THE UNIVERSITIES—WHAT IS HAPPENING ON OUR CAMPUSES?

(By Robert H. Wyatt)

The problem of trouble on the campuses is of such significance that organizations interested in advancing the cause of education should give it continuing and penetrating study.

It is easy to leap to the conclusion that some obstreperous young people on our campuses are kicking up trouble and should be coralled and punished. It is also easy to accept the thesis that existing structure and operation of higher education are entirely good and proper—therefore any young person who goes to college should be grateful for the opportunity. It would then follow that he should take it or leave it, in accordance with his own abilities and virtues.

These concepts are fallacious. Higher education is to a certain extent a privilege of the individual, but society's stake in that individual's education is greater than the individual's own.

Education is the genius of this great republic. Free public education has truly been the source and motive power for the building of our great, affluent economy and the social and political system that provides the highest standards of living in the world.

Fortunately there have been statesmen through the years—such as Thomas Jefferson, Horace Mann, and John Dewey—who saw that education is of such import to society that it is the duty of society to try to nurture and develop all the talent the nation possesses, whether our young people want their talents developed or not. There are times in the life of a child when he might choose to discontinue his education. Such a choice might extend into his teens or twenties, but the decision must not be his alone. It must be the decision of society, exercised through the democratic process.

SOME "SOLUTIONS" BEYOND BELIEF

The current suggestions being offered by some politicans that dissenting students should be swept out of the colleges and universities are almost beyond belief in a free democratic society. One is tempted to ask, "Sweep them into what, or into where, and with what results?"

Fortunately many college administrators are exercising the boldness to reply to such political figures—even on the highest levels of government—that such proposals, however well-meant, could hamper or doom the efforts of intelligent college personnel to solve the baffling problems of educating America's youth.

False concepts of the purpose and function of education in a democracy are not new. They have been with us since the beginning of the Republic. What is new in this situation is the role and the direction the universities are taking.

UNIVERSITY TROUBLES FORECAST

Seven years ago, in 1962, at our French Lick Leadership Conference, I commented to you on some of the forces at work in the universities. On that occasion I said:

"It is one of the paradoxes of history that an organization or an institution has an overpowering tendency to envelop itself in forms and trappings and prerogatives that become more and more important as the years pass. In some instances these artificial objectives actually succeed in enslaving the institution to the preservation of the forms rather than serving the purposes for which the organization was established. This

danger to the virility, the creativeness, and the flexibility of an organization amounts to a kind of cannibalism which must be continually analyzed and fought off if the organization is to remain sufficiently dynamic to serve the cause it espouses.

"Educational institutions at this moment are being challenged by the great new developments in science, automation, and social consciousness which they themselves have developed in their classrooms. The forms and the trappings and prerogatives that have grown up in these institutions, their athletic programs, their mania for power, for bigness, for control, are threatening the adequacy, the efficiency, and the economy with which they are finding and serving the real objective of education—development of the intellectual resources of our country."

Above and beyond these activities, the relationship of the university with the military in diverting faculty talents into destructive research, the relationship of university staff and officials with numerous large corporations bent on pursuing their vested interests, and the lack of adaptability to new social, economic, and political events and movements—all these practices place in the hands of dissenting students enough substance and enough status that they should be heard and the time-worn programs of the universities should be shaken and re-examined.

Obviously we cannot approve or permit student violence and lawlessness to invade the rights of the other students and citizens. Obviously if there are any outside organization involvements or influences inciting violence in student groups they should be identified and exposed. It is indeed to be hoped that the responsible among the students will soon inspire the confidence of the mass of the sudent body and that the net results of the outbreaks of 1969 will be productive of true advances in our institutions of higher learning.

Students of this generation have had experiences with the mass media and with the accelerated urbanization of our society that have advanced their comprehension and their store of knowledge several years beyond that of their predecessors of the previous generation. In addition to that, the quality of education in the elementary and secondary schools has advanced so strikingly that a college freshman is at least two years advanced beyond his counterpart of the previous generations.

LET US HELP YOUNG HUMANITARIANS

The students are rendering a great service. Some of it is far too violent and should be curbed, but the great mass of students are grappling with the hard problems of today and are viewing them without the clouded vision that comes from vested interest of a material kind. Let's give them all the help and all the encouragement we can in their efforts to serve humanity early in life before other activities and programs clutter up their vision and impair their singleness of purpose.

The students actually do have valid complaints. Even the conservative Indianapolis Star in a recent editorial took the rather surprising position that:

"The faceless, factory-like quality of the larger universities confuses, frustrates, and ultimately alienates and angers many young students. They see themselves as cogs in a huge machine. They are herded around like livestock. They are moved by the numbers. They feel like zeroes in the equation of campus life.

"They are taught in oversize classes, sometimes so huge they cannot even see the far-off 'prof,' who is likely to be a teaching assistant, talking metallically through a public address system. They rarely if ever see the 'superstar' professors whose magic names helped lure them to that particular institution.

"It is no indorsement of the crackpot ideas and movements often spawned in such surroundings to recognize that much of the harsh criticism leveled at the faults of bigness is valid."

These facts and many others growing out of our current social and political life should shock college administrators into a re-evaluation of their programs and the extent to which their activities have strayed from the purposes for which the institutions were founded.

TIME TO RESTUDY STRUCTURES

To summarize, the fact is that the university, like all other institutions that are established for a purpose and which live on for many years after the purpose is identified, finds itself in the position of need for a restudy of its structure and its program to achieve those accepted objectives. The people who are involved in the conduct of an institution are subject to the human desire, subconscious or conscious, to maintain the forms and traditions that contribute to their interests.

On top of all this comes the shocking disregard of university finances by the Governor and the 1969 Legislature and the increases in tuition of 50 percent to 75 percent on the 18th Century thesis that education is a privilege to be paid for by those who are able—all this in apparent ignorance of the modern imperative for a population educated for the social and technological demands of the 21st Century.

To counteract this kind of thinking, the Indiana State Teachers Association should attempt to balance all of the factors in these modern student uprisings and assume a role of scholarly balance in appraising the situation.

The Association should and will take a constructive position on the need for junior community colleges; on the mania of the big university to capture and absorb private organizations for university prestige and power; and upon the distortionary drive to sell intellectual talent and research for great corporate and federal monies. We must lead in this imperative crusade to restore the universities to the pursuit of the goals that gave them birth.

THE HEART OF THE MATTER

(Mr. BRADEMAS asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. BRADEMAS. Mr. Speaker, one of the most distinguished leaders in American education is Dr. John H. Fischer, president, Teachers College, Columbia University.

On June 3, 1969, I had the pleasure of hearing Dr. Fischer deliver the principal address at the commencement day convocation at Teachers College. Dr. Fischer's address on that occasion was a most perceptive analysis of some of the problems confronting American education today and I therefore insert his address at this point in the RECORD:

THE HEART OF THE MATTER

It is too early to predict the full effects of recent university disturbances, but one consequence is already evident: Commencement oratory is flowing in new directions. There are those, of course, who were hoping for the total disappearance of this quaint art form. But that would be improbable, for it meets a deep-seated human need. The commencement speech is not only one of the oldest forms of confrontation—it is the Establishment's very own, and neither revolution nor reform is likely soon to do it in.

If the commencement address is not about to be abandoned, we may be confident that it will be altered. Today I make a token contribution to that process. In a public display of self-control, I shall refrain from giving the members of this class any advice whatsoever. For well over thirty years I have been advising graduates on how to manage the world, with results that are readily visible. You will understand, then, why it is difficult for me to deny you the advantage that so many of your predecessors have enjoyed. But I am resolute. As you pass today from the tranquil groves of academe to the crude contests of the outer world, you will simply have to make it on your own.

It is in the nature of exercises like these to incline our thinking to the future. This year the inducements to look that way are stronger than they ordinarily are, not only because the recent past is so full of events we would prefer to forget, but more particularly because of the promising new ventures that are under way.

In Columbia the year has been better than the staunchest optimist would have predicted last June. If in Teachers College the contrast between actuality and expectation has been less marked, it is because a year ago we were already set upon a good beginning. Since that time the widespread contribution of ideas, support, and leadership from every segment of the College has produced substantial gains in many aspects of our common concerns.

Recruitment and admissions policies have been revised to attract promising students whom traditional procedures might not identify.

New scholarships have been established to assist able but impoverished students, particularly among minority groups.

New programs and courses have been planned to respond to urban problems.

Students, faculty and staff have worked with our neighbors of Morningside, Harlem, and other communities to strengthen local educational programs, from the nursery school to the senior adult level.

A construction program is being projected with community help to meet simultaneously the expansion needs of the College and the housing needs of the area.

In the arts, the humanities, and the sciences; in policy and practice; in every area of human development; in health, recreation, rehabilitation and guidance; through teaching, research and service, the work of Teachers College has gone forward.

And as we have worked at these tasks we have found new ways to manage our institutional affairs. In making decisions, in formulating policy, in evaluating our performance, all of us, students, faculty, trustees and staff have learned together and from one another. And for that learning, the College is clearly the stronger.

Yet, better than any others could, the members of this company know that our attainments are well this side of perfection. Things that we ought not to have done we have done. Tasks that should by now have been completed remain unfinished. Still, this has been a year of growth and gain and the credit for it must be distributed widely. The finest part of the story, however, lies not in what we have finished, not even in what we have begun. The best part of all is in the still untapped possibilities that we have discovered and in our fellows.

The principal question every university faces today is how to respond to the tasks the times impose. On every campus we must decide to what ends we shall commit ourselves, to what purposes we shall direct our energies. Repeatedly we are reminded that we must disenthrall ourselves, and to be sure we must. The thralldom of old dogma, the inertia of inherited prejudice inhibits every fresh departure and delays us every day. But it is not only the past that retards our prog-

ress. Contemporary errors also warp our rationality and distort our judgment. Too often we forget that the means we choose in haste become at once the nearer edge of the end we shall inevitably reach.

In institutions dedicated to the unimpeded search for truth, where the relations of men and the exchange of ideas should be governed by the rule of reason, it is especially deplorable to see candor displaced by sentimentality and reason yield to force. None of our institutions is beyond need of improvement. In some we may be sure that significant change will not begin until keener vision is stimulated by increased vigor. Occasionally both may have to be introduced with some degree of external insistence. But nowhere can sound reform be accomplished through soft-headed acquiescence to misguided demands.

Some of the current efforts to expand opportunities for disadvantaged students offer ready examples of this error. The knowledge that advantaged students who are admitted to college and awarded degrees often obtain good positions in society has led some people to believe that the same happy fate will inevitably be shared by every disadvantaged youngster—if only he can manage to reach a campus and get his name on a diploma. From this misconception, only a few more wrong steps carry one to the conclusion that grades are meaningless symbols, degree programs barriers to block the poor, and every academic requirement but another trick to deny the deserving their natural rights.

The sensible, humane revision of admission policies and the imaginative redesign of curricula—both of which are necessary and overdue—could if we are not careful deteriorate into the perpetration of an academic fraud. The most damaged victims of that deception would be the very young people who can least afford it. That many of those responsible meant well, that the harm suffered was the unintended result of charitable motives, would be a cruelly ironic excuse. It would be a bitter mockery, indeed, if a century of struggle to win equal access to high quality education for all Americans should now end in a cheap scheme to assure every minority student a diploma signifying successful occupation of the dean's office.

But in decency and humanity, we cannot drop the matter there. For the plain fact is that young Americans by the tens of thousands, particularly the sons and daughters of our long-deprived minorities, are being denied the opportunities that are due them. A college education can no longer be regarded as a form of personal preferment, a privilege for those who can afford it, or a charity to be extended—sparingly—to those of the poor who display enough distinction or docility.

"In the conditions of modern life," Whitehead warned us long ago, "the rule is absolute. The race that does not value trained intelligence is doomed."

For the young person who would make the most of himself and of his place in society, no less than for the nation as a matter of public policy, higher education must be recognized as a universal necessity. The transition to such a view will not be easy. It happens, however, to be imperative, and in one way or another we shall have to manage the changes in personal attitude and institutional policy that it requires.

One consequence of such a shift will be to abandon the notion that a bachelor's diploma is a certificate of admission to the elite. Today we must be prepared to consider higher education as in 1848 Horace Mann viewed universal primary education: "the great equalizer of the conditions of men, the balance wheel of the social machinery." Seen in that light, the award of the bachelor's degree would signify not separation from the broad body of citizens but entry into the membership of those who have profited from the normal opportunity for intellectual development that free men should have.

In a society dedicated as ours has long been in principle, and must now be in practice, to personal fulfillment for all its people, education is demeaned if it serves mainly as a vast sorting mechanism. Schools and colleges have more important functions than screening the less apt from the more able, the less acceptable from the more presentable. The traditional view of the educational system as a pyramid that should be organized and administered to assure that only a few survive to the apex has become a wasteful and inhumane anachronism. The proper purpose of education is not to reduce but to increase the number of people who are enabled to perform nearer to the peak of their abilities. In an open society, schools and colleges should make it possible for ever larger proportions of the population to move to higher levels of performance and participation.

The inclusive approach to education requires us neither to abandon scholarly standards nor to reject the goal of academic excellence. On the contrary, the object should be to encourage enhanced respect for standards and higher achievement by larger numbers of students. To accomplish those ends, however, we shall have to assign higher priority to teaching and learning than we do to testing and screening. One of the best kept secrets of the academic world, as true today as it has been for centuries, is that reputations of educational institutions usually reveal as much about their admission policies as they do about the teaching proficiency of their faculties. From the nursery school to the graduate professional level, it is a truism of academic life that if the students are selected with sufficient care any institution can be made to look better than it really is. The test of a teacher or of a college is not the promise students possess before they arrive but how their performance has been affected by the time they leave.

Opportunities offered students need not be narrowed merely because an institution broadens its receptiveness. When windows are opened upon a wider world, the sharp-eyed see no less because companions of dimmer vision share the view. The perceptive observer sees even more when he helps another to expand his own awareness. Higher education can be made more inclusive without sacrificing either relevance or effectiveness. The evidence is abundant that uncounted thousands who are now denied access to higher education are entirely capable of profiting from scholarly discipline, if only they can obtain a suitable combination of incentive and opportunity. But they must find it in an environment that offers enough personal security to permit them to respond to the incentive and to take advantage of the opportunity.

It is no secret that many students of university age have been badly handicapped by poor primary and secondary schools. But their early deprivation is no reason to deny them later opportunity. Indeed, it is the clearest justification imaginable to see that they receive as young adults the advantages they missed as children. There can be little doubt that the expansion of opportunity in higher education is now retarded by our reluctance to liberalize admissions criteria and by habitual persistence in old predispositions.

I have invited your attention to this problem today not to suggest that solutions are readily available. You know as well as I that far from seeing clear answers, we do not yet understand the questions. But this much I do know: what we face here is essentially a moral issue. Profound academic and professional considerations flow from it. New formulations of policy and new patterns of practice must be devised to deal with it. We shall undoubtedly have to accustom ourselves to quite different ways of appraising potentiality and performance. The tasks that now fall to our profession will be exceedingly demanding.

But at the heart of the matter, where professional practice and public policy converge, the issue is essentially moral and, like most moral issues, ultimately simple. How shall our institutions, and we who are accountable for them, serve and enhance the individuality of each of our people? What power have we, and what duty, to help every young person not only to make his mark but to find his soul?

Only a brave man or a fool would claim to know the full meaning of the turmoil now that wracks the world. But the more I see of it the stronger my conviction grows that we may be witnessing the birth of a new era in relations among men, a period that may well be marked by a heightened regard for individuality and a wholly new appreciation of the meaning and possibilities of community.

The events that are shaking academic institutions today are one manifestation of this world-wide ferment, but they have a special significance of their own. For with remarkable clarity they reveal the values and the commitments of a substantial proportion of the leaders of the new generation.

To understand what is occurring, to sense its import now and for the future, we must read the signs with care. The spume that blows from the wave crest is not to be confused with the running of the tide. It would be a serious error to assume that the disruptors, the exhibitionists, and the barbarians who make a mockery of serious reform, represent today's students or speak for them. But it would be a far more profound error to underestimate the determination of large numbers of our finest young people to see that the management of our public and private affairs is made more responsive to the principles of decency and morality.

Father Andrew Greeley puts the matter well when he writes that the difficulty is not immorality, but that young people are "almost too moral for the ethical systems available to them."

There can be no doubt that the cost of change in some places is excessively high. Good people are being hurt and sound institutions are being needlessly damaged. But we must not allow our own perspectives to be distorted by the outrageous incidents that attract the cameras and gain the headlines. The froth is not the wave, and the wave is not the tide.

If there is any validity at all in this interpretation of our troubles, the implications for those who teach are at once staggering and enormously sustaining. For whatever the prospect, our best hope—our only hope—lies in cultivating the possibilities—intellectual, esthetic, moral—of every person in this land. It is a great work to which you have turned your hands and set your minds. As you try to measure up to it, I wish you well.

TO SAVE THE BIG WALNUT VALLEY IN INDIANA

(Mr. BRADEMAS asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. BRADEMAS. Mr. Speaker, I rise today to speak on a subject of concern to all of us here and to a great many of our citizens: the increasing threat which burgeoning industrial America poses to our natural environment.

The solution to the problems of the environs in which today's Americans live is a challenge to all of us in the 1970's.

But we must move quickly if we are to preserve the natural beauty of our land. Today I want to point out some of what we must do.

Our economy is now producing more than ever before, and the prospects for the future are even brighter. But we have paid dearly for our industrial growth in unnecessary damage to the natural resources of our Nation.

Oil from faulty drillings fouls our beaches and endangers marine life and water fowl.

Pollution of the air takes minutes from each of our lives.

Human and industrial waste soils our streams and rivers.

Poisonous pesticides and fertilizers contaminate our food.

One of our Great Lakes has been reported as "dead," and fatal illness threatens others.

Messy industrial areas, unsightly junkyards, ugly billboards, and thickets of powerlines diminish the joy of what we could otherwise see.

Mr. Speaker, we all know that for far too long, man has carelessly assumed that nature can absorb unlimited punishment. At long last people are becoming aware of their environment, conscious of the arguments set forth by conservationists for many years—and are beginning to show some willingness to conserve the remaining areas of our great outdoors and to repair the damage caused our environment by thoughtless policies of industrial expansion.

Unfortunately, we cannot now turn back the clock. Much of our natural environment has been permanently destroyed, but some portions can still be restored and others preserved. There is no formula for instant success in the effort to undertake measures to conserve our environment, but I am encouraged by recent progress made toward this previous objective.

ENVIRONMENTAL QUALITY COUNCIL

Mr. Speaker, earlier this month President Nixon focused public attention on the need for coordinated consideration of environmental problems by creating a Cabinet-level Environmental Quality Council. I am pleased to say that there is bipartisan agreement between the White House and Congress on the need for legislation and programs that will leave no doubt of a national resolve to stop fouling up our living and looking space.

Senator HENRY JACKSON of Washington, chairman of the Senate Interior and Insular Affairs Committee, has offered legislation which would establish a national environmental policy with a full staff in the Office of the President, supplementing the step already taken by our Chief Executive. This legislation seeks to "assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings" in order to attain the most beneficial use of resources compatible with conservation and protection of the environment, and the preservation of historic, cultural, and natural values.

Here are two significant aspects of Senator JACKSON's bill:

First. It would recognize for each person a "fundamental and inalienable right to a healthful environment" and would impose on everyone a "responsibility to contribute to the preservation and enhancement of the environment."

Second. It would require every Federal agency to accept responsibility for the protection of our environment according to guidelines set up by Congress.

Only experience will point to the precise guidelines needed to halt the erosion of our environment. But in establishing initial policy, we in Congress must recognize that the needs of environmental quality will not be met simply by expanding traditional resource planning programs or through the improvement of economic or administrative efficiency. I make this observation for these reasons:

First. Our principal objective is not to meet target goals for commodity production.

Second. Our principal objective is not to draw upon our inventory of natural resources and predict consumption requirements.

Third. Our principal objective is not to reduce duplication of efforts on the part of Government agencies.

Fourth. Nor is our principal purpose to cut Government expenditures.

What we do can help achieve these objectives, but these goals are all incidental to an overriding purpose: to define the criteria essential to a healthy environment.

A FIRST STEP

Mr. Speaker, thus far, the problems of environment have been almost nobody's business but that of various conservation groups. It is time to make the problem of environment the paramount business of the Nation. The Environment Quality Council and the companion legislation represent a first step in this direction.

As we move to lift the quality of our environment, however, Congress, the executive branch, industry, and private groups must all realize that to accomplish this task, it will probably be necessary in some cases to change our goals and curtail present programs. If we do not, we may all suffer the consequences through the subtle beginning of man's own self-destruction.

My concern for our environment stems largely from its effect on our daily lives. It is the quality of American life to which we must now give more attention. One way in which we can preserve and protect our environment is to insure that our natural resources are employed to enhance the quality of life of every American.

The concept of the use of our natural resources has a double meaning. There are both the material definition and the perhaps deeper, more significant psychological, and spiritual meaning through which these resources can elevate the heart, mind, and spirit.

Of course we must develop our resources materially, but this does not obviate the need for land free from the structures of our modern society where each of us can walk—alone—away from the complexities of modern life.

The boy sitting on the steps of a tenement in New York City or South Bend, Ind., deserves a place where he can discover that the world does have clean air, and that life can offer more than the monotony of ghetto existence. The girl studying high school biology or the college student pursuing advanced studies in one of the natural sciences needs a place in which to observe his discipline in the state of nature. And a father must have a place where he can take his family for rest and recreation at reasonable expense.

OPPOSES BIG WALNUT CREEK PROJECT IN INDIANA

Mr. Speaker, because of the urgent necessity to develop our resources as recreation facilities while preserving them in their natural state, I have supported the fight to save the Indiana Dunes, and this is why I am today announcing my opposition to the Big Walnut Creek Reservoir project proposed by the U.S. Army Corps of Engineers.

It is this latter project, Big Walnut Valley—a living museum of natural history located in Putnam County, Ind., some 35 miles west of Indianapolis, Ind.—that I would like specifically to bring to the attention of my colleagues here today.

An ill-conceived and poorly justified proposal of the Army Corps of Engineers threatens to destroy the Big Walnut Valley. The valley has been declared eligible as a national natural landmark, one of only 130 sites in the entire United States to be declared of that quality and one of only two sites in Indiana now eligible for this nationally significant designation.

The Corps of Engineers is proposing to build a dam and reservoir in the Big Walnut Valley. Such a project would flood major portions of the valley, destroying its natural significance, erase the flood plain which is a major criterion, in natural landmark recognition, and ruin the ecological complex which makes the valley important.

SIGNIFICANCE OF BIG WALNUT VALLEY

Mr. Speaker, Big Walnut Valley is an unsurpassed and unduplicated relic of the last glacial age and was 15,000 years in creation. Parts of its ecology include Indiana's three largest remaining eastern hemlock trees, our two largest sassafras, more than 320 plant species, 125 or more species of birds, and Indiana's most extensive growth of Canadian yew. This valley represents a living library of nature which, if its qualities are preserved, will be of incalculable value to scholars and to universities. Scientists and conservationists point out that the significance of the Big Walnut Valley lies not simply in a few record trees or plant growths but in the larger environmental system suitable for their occurence and proliferation.

In fact, recognition by the Corps of Engineers of the area's ecological value even led them to the absurd inclusion of a "nature center"—containing a museum and observation towers from which visitors could watch herons—in the final plans for the project, while the corps proposes to destroy the valley.

The justification for the corps' Big Walnut proposal has been a benefit-cost ratio. According to the corps, flood control plus recreation value plus water shortage plus water quality control are

estimated to be worth more than the project would cost in tax dollars.

I cannot agree with the corps.

First, professional sedimentation tests indicate that the reservoir would be silted up in 100 years, a relatively short life span for this kind of project.

Second, "recreation" areas to the Army mean speedboats and fishing areas and picnic grounds. There are eight such "recreation" areas within a 50-mile radius of Indianapolis, but there is nothing for the outdoorsman who enjoys hiking in woods, fishing in fresh water streams, and the serenity of an unpolluted river running through a cool valley.

Third, there are abundant water storage facilities in close proximity of Indianapolis. Mud Creek and Geist Reservoirs alone could be expanded to add 49 million gallons in water storage without a Big Walnut Reservoir.

Fourth, optimum conditions for a storage reservoir are opposite from the optimum conditions for a flood control reservoir. Yet the crops claims both as a justification for this project.

REELSVILLE FAR BETTER SITE FOR DAM

Mr. Speaker, one of the 24 alternative sites to Big Walnut Valley, which the Army Corps of Engineers has concluded would be economically feasible and comparable in cost-benefit ratio, is a dam near Reelsville, Ind.

Under corps' criteria this location offers far superior flood control and recreational potential. Reelsville would provide 307 square miles for flood control as opposed to Big Walnut Valley's 197, and would offer 7,300 water recreation acres to the 4,500 of the proposed Big Walnut Reservoir.

Selection of the Reelsville site would save Big Walnut Valley from destruction. It is for this reason that I oppose the current plans of the Army Corps of Engineers' for this reservoir project.

OPPOSITION TO PROJECT SHARED

Mr. Speaker, I would like to add that my opposition to the corps' plan is shared by every major conservation group in the State of Indiana: the Izaak Walton League; the Indiana Conservation Council,, an affiliate of the National Wildlife Federation; the Save-the-Dunes Council, which for years has battled to save what is left of our Lake Michigan shoreline; the National Audubon Society, now headed by Dr. Elvis J. Stahr, former president of Indiana University, who has made personal appeals to save the valley; the Indiana Academy of Science, which includes the foremost life and earth scientists of the major colleges and universities in the State; and most of our country's major conservationists, including the Sierra Club and the Wilderness Society.

Further, officials of Indiana's three largest metropolitan school districts—Indianapolis, Fort Wayne, and Gary—have signed letters for the record asking that the corps' plan be changed to prevent any flooding in Big Walnut Valley.

Mr. Speaker, while all of these professional leaders and conservationists would not argue the need for sound water management programs, their perceptiveness leads them to the justified position that we need not destroy our greatest remaining natural areas on the anvil of a benefit-cost ratio.

INDIANA'S NATURE PRESERVES ACT

Mr. Speaker, I might say too, that Indiana's General Assembly passed a landmark bill in 1967, The Nature Preserves Act, which allows the State to acquire and manage areas such as the Big Walnut Valley in the public interest for educational, scientific, and aesthetic purposes. While the State has not yet been persuaded that the Valley should be preserved, there is no question that Big Walnut Valley, as a national natural landmark, would occupy perhaps the highest priority for dedication as an Indiana nature preserve and an asset for the entire Midwest. Two competent ecological studies—one conducted by Dr. Robert O. Petty for the National Park Service and the other by Dr. Alton Lindsey under provisions of the statewide study financed by the Ford Foundation—place the Big Walnut Valley, in its presently unimpaired state, at the pinnacle of Indiana's remaining natural treasures.

COMPROMISE SOLUTION URGED

Mr. Speaker, currently an appropriation of $50,000 has been included in the President's recommended budget for fiscal year 1970 to be used by the Corps of Engineers to initiate "advance engineering and design studies" on the Big Walnut Reservoir project. I would urge that instead, the Army Corps of Engineers be instructed to use these funds to study and select one of the many alternative sites for the proposed reservoir, alternative sites which would impound no water for a distance of 3 miles North of U.S. Highway 36, and thereby not endanger Big Walnut Valley. I would also urge that the corps be charged specifically with investigating the potential of the Reelsville site for such a reservoir.

Mr. Speaker, if this course were followed, a reasonable compromise could be found between the forces favoring and opposing the proposed reservoir for Big Walnut Valley. Fairness to all concerned should surely be our concern here, and the action I am now proposing would be fair. It would not eliminate the possibilities of the Army Corps of Engineers constructing a reservoir in the area; nor would it eliminate for all time one of America's great natural landmarks. What I propose is in the spirit of give-and-take, of compromise, and a blending of varied interests which has marked resolution of a great many other similar projects which have come before the purview of this House.

COORDINATED CONSERVATION POLICY NEEDED

Mr. Speaker, in concluding my remarks, let me reiterate my statement at the outset of my remarks. The challenge to conservation in the next decade is in seeking solutions to the totality of problems that threaten our environment. But the enormity of the task will require that we double our efforts in the future, if we are to reverse the trend of man's determined rush to destroy himself.

We must work to awaken all Americans to the need for a rational schedule of action to conserve our environment instead of our our past hit-and-miss programs that have depended on annual political or budgetary pressures.

Mr. Speaker, we need a coordinated national, regional, and local environment policy. For unless our country is willing to move forward in some coordinated fashion, all the talk of a great American future may be lost in the destruction of our own natural surroundings.

We need to understand the vital importance of this challenge to prevent the desecration of our environment.

But it is not enough simply to understand. We must act to build a nation where there is joy for us and for those who come after us in the beauties of land and water and sky—and where we will be proud to have the quality of our environment be the measure of the quality of our civilization.

To achieve this high goal, we have a long way to go.

But, Mr. Speaker, I am confident that many Americans across the country will help reach this destination.

CORPS OF ENGINEERS BIRTHDAY

(Mr. ROBERTS was granted permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. ROBERTS. Mr. Speaker, on the 149th anniversary of the formation of the Army Corps of Engineers, the Longview Journal published an editorial which enumerated the contributions and accomplishments of the corps to the entire State of Texas as well as the east Texas area. I would like to join the Journal in saluting the Corps of Engineers.

From its distinguished founding in 1775 by George Washington to its present program of public works and development of our Nation's resources, the Army Corps of Engineers has maintained a reputation of excellence.

So that my colleagues may know the esteem with which Texans regard the Engineers, I would like to include the editorial in my remarks.

The article follows:

CORPS OF ENGINEERS BIRTHDAY

The U.S. Army Corps of Engineers marked its 194th anniversary the other day (June 16) and this newspaper, long familiar with some of the activities of this hard-working agency, extends its congratulations.

The Fort Worth District, the Galveston District, and the New Orleans District—each of which has an area of responsibility in the East Texas region and in fresh water stream basins which course through the region served by the Longview News and Journal—marked the birthday in different ways.

The largest construction agency in the world, the Army Corps of Engineers was founded by George Washington in 1775 to provide combat support to the embattled Continental Army. Across the succeeding years, the Corps has played a distinguished role in every battle and campaign in which the Army has engaged, from Bunker Hill to the jungles of Vietnam.

The Corps of Engineers, through its civil works program, also has been and continues to be the principal developer of the nation's water resources—a fact which makes this agency of vital importance to the East Texas region.

The Corps has developed 19,000 miles of inland and intra-coastal waterways, and 500 coastal Great Lakes and waterway harbors.

The $5 billion the Corps has spent to date on flood control has already saved the nation over $15.5 billion in flood losses. The often flood-ravaged Sabine River basin looks forward to eventual control work by the Corps.

In a ceremony at New Orleans, District Engineer Col. Herbert Haar pointed up some of the accomplishments of his district—projects which can be appreciated here in the upper reaches of such Mississippi and Red River tributaries as the Cypress and Sulphur Rivers.

Among the projects Colonel Haar noted were the shallow draft Gulf Intracoastal Waterway and its network of feeder streams, the deep draft channel in the Mississippi and the Mississippi River-Gulf Outlet, a far advanced flood control program—and the part these improvements are playing in the economic development of Louisiana.

Colonel Haar also took a look to the future, saying: "The new era holds even greater challenge for us. Ahead lie four hurricane protection projects (among others) the problem of transforming a major river—the Red—from a useless liability to a valuable asset. . . ."

The Galveston District, which has responsibility in the lower basin of the Sabine, could cite similar major coastal and inland projects completed and now serving the needs of the region and others still in the works or in planning stages.

The Fort Worth District lists numerous major projects contributing to progress in its area, and is busy and will be for some time in studies and planning a comprehensive flood control program in the Sabine Basin—the need for which was demonstrated at a Congressional hearing in Longview early this year—with the prospect that it will be ready for submission to Congress for action probably in its next session.

We extend to these districts and their leaders and personnel, and to the entire U.S. Army Corps of Engineers, the congratulations and best wishes of the leadership and general citizenship of this East Texas region for the vast scope and high quality of its civil works program, as well as its indispensable contributions to the U.S. Army.

COMMENDATION OF ADDRESS BY CONGRESSMAN JACK H. McDONALD ON THE 1970 CENSUS ON POPULATION AND HOUSING

(Mr. BETTS asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. BETTS. Mr. Speaker, my distinguished friend and colleague, the gentleman from Michigan (Mr. McDONALD) recently made a significant speech on the 1970 census on population and housing which will be of interest to all Americans. The address, before the American Management Association in New York on June 24, 1969, reviews the main points of the current census controversy and summarizes the contentions of those who advocate census reform. Thoroughly documented in content, the analysis contains pertinent excerpts from statements of those who have expressed a professional interest in the forthcoming census; namely, noted legal scholars concerned with the right of privacy as well as users of statistical data.

I commend this timely and well-balanced address to the attention of all Members of Congress of the United States:

ADDRESS OF CONGRESSMAN JACK McDONALD

Thank you very much Mr. Chairman and members and guests of the American Management Association. It is certainly a pleasure to be here this morning. During the past year there has developed quite a controversy over the scope and nature of the questions to be asked in the 1970 Census. The Census and Statistics Subcommittee of the House Post Office and Civil Service Committee has completed eight days of hearings on Census legislation similar to my bill H.R. 251 which would limit to seven the number of census questions requiring answers under penalty of law; those categories are (1) name and address, (2) relationship to head of household, (3) sex, (4) date of birth, (5) race or color, (6) marital status, and (7) visitors in home at the time of the census. These proposals have also been considered by the Constitutional Rights Subcommittee of the Senate Judiciary Committee and the Joint Economic Committee. At the present time no further action has been scheduled, but the House Subcommittee is now reviewing all the testimony it has received. Since the time before Census Day is running out, Chairman Wilson has indicated he will act on this issue as soon as possible. Due to my active support of this legislation, when I saw the list of the other participants in this program I felt somewhat like Ho Chi Minh being invited to speak with the U.S. Joint Chiefs of Staff.

In all sincerity I would like to state at the outset that the fundamental problem of census reform is not one of governmental data collection versus non-collection. I am well aware of the importance such information has on many of your business activities. Moreover, if public officials are to formulate programs responsive to the needs of the people, it is imperative our decisions are based on up-to-date facts.

Nonetheless, we must answer the basic question of how to get the best data with the least amount of inconvenience and infringement on certain inalienable human rights, specifically, the individual's right to privacy. Now I fully recognize that the notion of privacy may be a rather subjective proposition. But I have serious reservations about the concept that loss of privacy is an automatic by-product of national growth. Dr. Taeuber of the Census Bureau acknowledged today's trend for information collection with this comment: "We've got to limit the freedom that American pioneers had . . . and a nation has to adjust to differences that exist in a country with 4 million people or 200 million".

Obviously, with increased population and advanced technology, one must make basic adjustments. However, I do not passively accept the fact that these changes necessarily mean one has to relinquish his right to privacy. In fact based upon the 1st, 3rd, 4th, 5th and 9th Amendments, and several U.S. Supreme Court rulings, this right is definitely entitled to constitutional safeguards. My strong feelings about this right does not arise out of an irrational fear of Big Brother. Two law professors have eloquently pointed out the basis of my concern. As Charles Fried of the Harvard Law School aptly points out "the right of privacy is one of the most important expressions of the individual's sense of worth and autonomy against impersonal institutions . . . Just as an insistence on property rights is not a symptom merely of greed but of a desire to maintain control over one's own person and resources, so also an insistence on privacy is not a symptom merely of secretiveness. It is a crucial aspect of one's sense of personal integrity and individuality to maintain control over information about oneself."

I also concur in the thoughtful statement of Arthur R. Miller of the University of Michigan Law School. He said ". . . The breadth of concern over the dehumanization of modern society and the animus directed at the information activities of the government cannot be ignored. The omnipresence of data collection activities and the computer cannot help but have a numbing effect on the congeries of values we subsume under the heading of 'personal privacy' and debilitate the citizen's conception of the government as a relatively benevolent or protective institution. The climate or atmosphere of suspicion engendered by an accumulation of invasions of privacy is of far greater concern than the direct harm caused by the particular incidents themselves."

Furthermore, I would like to call to your attention a letter from a former Census Bureau employee who resigned "for reasons of conscience" because of the intrusive nature of the program upon which this person was working. Although the name has been requested to be withheld, let me quote you some excerpts from this communique:

"Few realize that the Census Bureau no longer works on a 10 year population survey basis. Instead, they have continuous inquiries into every phase of America's homes and businesses.

"A plan has been set up dividing the entire nation into theoretical areas of 1,000 addresses. Ten addresses are selected in a given group of homes to be interviewed repeatedly for eight months in a twelve month period. Actually, the family is interviewed for 4 consecutive months, is allowed to rest for 4 months, then is interviewed again for 4 more months. In this way, a family's fortunes, misfortunes, and activities are covered for a full year.

"We told the people that the interviews were entirely confidential, that their identity was of no importance, and that their answers were for statistical purposes only. However, the respondent's name and Social Security Number and those of each member of his household—relative or otherwise—were entered on a large control card with his address and other interviewing forms carried his same control card number so that all of these papers could be kept together in government files, discrepancies checked out, etc. Interviewers were asked to return to homes where answers to questions were in disagreement with answers in previous months. The printed questions, tho prying may seem innocuous at first reading, but after eight months of repeated questioning we would ultimately find out everything concerning the family for five years back."

I think these remarks, especially the reference to the Social Security number, vividly point out the disquieting ramifications of the omnipresent whir of the computer. The computer can be a most valuable tool, but its use, especially by a governmental agency, must be closely scrutinized. To quote Dr. Alan Westin of Columbia University, "Once computers are installed, they acquire a momentum of their own . . . The result is that individuals and organizations today are being asked more detailed questions about themselves than was even possible or desired before computerization. Case studies of organizations adopting computers have shown that their information base is enlarged two or three fold, and that the new information is sought in areas, reporting sources, life, or activities that were previously immune from inquiry because of the physical or cost limits on acquiring, digesting, and using such information."

Couched in this framework, I cannot help but feel that many of the proposed questions in the 1970 Census questionnaire go too far beyond the basic intent of the Census, as spelled out in Article I of the Constitution, to justify requiring a mandatory response under penalty of law.

I realize that there is unanimity in the Executive Branch that a voluntary approach to the Census will not yield sufficient infor-

mation. In fact the Administration has gone so far to promote its point of view, that Vice President Agnew sent a letter in April to the governors of all fifty states asking them to contract their congressional delegations and to stress the alleged adverse ramifications to the states if a voluntary census were conducted. This is a most unusual procedure.

I am also aware that the Census figures are used to design both public and private voluntary sample surveys. However, I am not familiar with any data supporting the contention that criminal sanctions are any more productive. In fact, my personal experience as a Director of the 1960 Census in Wayne County, Michigan, leads me to believe that, in general, people are most cooperative in responding without any reference to the possibility of criminal punishment for noncompliance.

I know that the Census Bureau and many State agencies carry out various surveys on a voluntary basis with minimal difficulty. Furthermore, private opinion and marketing organizations often deal with most sensitive areas such as income levels and political beliefs and they have indicated that they have a very low refusal rate.

Now it has been said that proposals for conducting a substantial part of the census on a voluntary basis come predominantly from people with no evident credentials in sampling procedures or in survey techniques. However, I would like to cite you excerpts from a letter written by a statistician, indeed a professor who has worked with the Census Bureau on housing inventories in the cities of Philadelphia and Baltimore. Professor William G. Grigsby of the Institute for Enivironmental Studies at the University of Pennsylvania, admits to a general pro-Census Bureau bias. But he points out:

"In analyzing the point at issue, it is helpful first to understand the reasoning behind the position that the Bureau takes. Frankly, although I have followed some of the testimony, it is not altogether clear to me what the Bureau's underlying concern really is, since it regularly conducts all sorts of surveys on a voluntary-answer basis. The opposition to voluntary reporting in this instance would seem to stem primarily from a prior decision to rely heavily on a mail questionnaire. Response rates to mail questionnaires are typically quite low, and the Bureau could reasonably expect considerable difficulty in obtaining a high rate of completions if it did not have a certain amount of authority behind its request for information. If this is what worries the Bureau, however, the issue which should be resolved is whether a mail survey is feasible, not whether compulsion is necessary and proper.

"Even if my interpretation of the Bureau's position is incorrect, there are several compelling reasons for insisting on a voluntary census.

"First, assuming that proper follow-up procedures to the mail survey can be implemented, response rates should be higher, not lower, if a voluntary approach is used. Dr. Eckler has expressed the worry that local or national campaigns urging citizens not to respond would undermine a voluntary approach. The real danger is precisely the opposite; namely, that a compulsory approach would generate such campaigns, and on a wide scale. Dr. Eckler and others may be misreading public sentiment and under-estimating the vast changes in atttudes which have occurred since 1960 when: (a) the compulsory aspects of the census were not broadly recognized; (b) social unrest in the cities was minimal; and (c) inner-city families had not been continually besieged by information gatherers. In 1970, gaining the cooperation of the American public will depend much more on convincing them of the value of their cooperation than on threats of fines or imprisonment.

"Second, if the Bureau is forced to rely on compulsion to obtain its answers from a large segment of the population, the validity of much of the information is called into question.

"Third, the most widespread resistance will come from persons who are asked to fill out the long form, and there is something patently unfair in exposing this randomly-selected group to extra risks of punishment.

"Fourth, if most questions are put in a voluntary category, the chances of easily obtaining responses to the few mandatory questions increase. If all questions are made mandatory, however, resistance to the entire questionnaire stiffens. The Bureau evidently is either: (a) willing to take the risk of not obtaining complete enumeration in order to achieve depth; or (b) unreceptive to the argument that complete enumeration would be imperiled by compulsory procedures. Such confidence, though based on long experience, does not seem entirely warranted.

"Finally, compelling persons to answer questions about radios, cars, bathrooms, bedrooms, etc. is simply difficult to justify on any grounds. The importance of information about these items is the necessary condition for their inclusion in the census; it is most certainly not, however, a sufficient condition for making responses compulsory. Indeed, that this issue should even become a matter of serious debate ought to be a matter of general public concern."

In view of the vehement assertions of the unworkability of a partially voluntary census, I feel Professor Grigsby's expertise sheds new light on this subject.

I would also like to elaborate on some of the pragmatic considerations Professor Grigsby raised. Within the last decade this Nation has experienced an unprecedented amount of turmoil and dissension leveled against "the Establishment" by young people and minority groups. I am also quick to point out that the deep concern and frustration over the Census expressed by the average citizen is something we Representatives in Congress feel every day. In fact, I have received more letters on this subject since January than I have on any other issue, including taxes, crime, and Vietnam. Furthermore, the results of my latest Congressional questionnaire reflect that over 90% of my constituents favor H.R. 251.

This situation has relevance when we consider that the 19th Decennial Census will distribute 60% of its questionnaires on a mail-out, mail-back basis and the long forms involving from 66 to 89 questions will be asked of 20% of the population. As William Chartener, Assistant Secretary of Commerce, indicated in Congressional testimony, "The success of a Decennial Census has always depended upon—and enjoyed—the willing cooperation of our citizens, not on the threat of criminal penalties." Granted the threat of criminal sanctions is admittedly only that, since it is most unlikely it will ever be realized. However, in light of the indignant mood of the Nation's populace, many citizens may refuse to cooperate by failing to respond and challenge the Government to prosecute them. To make criminals out of a large number of otherwise law-abiding citizens seems to be misguided and unwarranted.

Moreover, I have serious reservations about the constitutionality of exposing only ⅙ of the population to the possibility of prosecution for non-compliance in answering the longer forms.

A good way to reduce this resentment and to promote an atmosphere of courtesy to encourage the needed cooperation would be to eliminate the mandatory nature for all but the seven basic categories I previously mentioned. I believe this approach is more likely to produce sound data as well as to restore some degree of confidence, respect, and understanding between the people and their government.

It is important to remember that 5.7 million people were not counted in the 1960 census and that census data serves as the basis for the allocation of funds for many important social programs in addition to legislative redistricting. This latter factor has great importance in light of last year's Supreme Court Ruling which requires mathematical precision in reference to the one man one vote concept and extends it to even elected county governing units. Therefore, in light of vital need for public cooperation to insure sound statistical readings coupled with the necessity to protect the right of privacy, it would seem more desirable for the Census Bureau in 1970 to accurately fulfill the basic constitutional purpose of the Census and more greatly satisfy Congressional mandates by limiting the number of questions to be asked under penalty of law rather than to risk the public's wrath and fail to effectively or adequately achieve either of these goals.

There are also other reforms that I would like to see carried out. I was most pleased when Secretary of Commerce Stans announced the following three changes to be implemented after the 1970 census: "(1) proposed questions will be submitted to the appropriate committees of Congress two years in advance of future censuses; (2) an increased number of representatives of the general public will be appointed to various advisory committees which contribute to the formulation of census questions; and (3) a blue-ribbon Commission will be appointed to fully examine a number of important questions regarding the Census Bureau, including whether or not the decennial census can be conducted on a voluntary or a partial voluntary basis. The Commission would also examine and offer proposals for modernizing and improving the operations of the Census Bureau." However, I would like these proposals enacted into law so that future Secretaries who may not be as sensitive to the problems of the census, will be required by law to continue these practices. I am also hopeful that Congress will pass a bill as the House did in 1967 which provides for a limited mid-decade census. I can point to several communities right in my own district where the population has doubled since 1960. And yet they still receive funds from both the state and federal government based upon the 1960 population reading which is now totally irrelevant. Due to great mobility of our citizens, I feel it is imperative to have some form of quinquennial census. In addition, I would like to have longer and more intensive training for enumerators. Under current procedures the average enumerator only receives 12 hours training. The people who will work in the core cities and difficult rural areas receive 22 hours preparation. It strikes me as somewhat strange that all of the testimony against a voluntary approach stresses the difficulty in obtaining data in these areas and yet so little time is devoted to training. One private national marketing firm in Detroit spends up to 5 full days training its interviewers. Due to the importance of their effectiveness, especially if we adopt a partially voluntary approach, it seems logical that training should be given greater emphasis.

I would also like to see greater research devoted to sampling techniques in order to reduce even further the number of individuals who will be asked to respond to long census forms. This year approximately 3 million households were relieved of the burden of answering the longest questionnaires. I am hopeful that the numbers can be reduced even further in the future.

Finally, although servicemen overseas are counted, they are not included in the population of their home state or local community, failure to place these people in any geographical area unjustly deprives their

states of federal funds and possibly representation at all levels of government. The Bureau is presently examining ways to correct this situation and I applaud this effort and hope it can be worked out by April.

I would like to conclude by stating that I have no objection to private industry and other concerns availing themselves of census data submitted by private citizens on various government sponsored questionnaires. Modern business, like modern government, needs accurate information to assist them in the complex process of decision-making. My primary concern is that the American citizenry has become so subjected to requests for data of questionable relevancy and of a highly personal nature, that people are losing control over the flow of information about themselves. What we in Congress are attempting to do is establish a balance between the individual's constitutional right to be left alone which Supreme Court Justice Douglas calls "The beginning of all freedom", and the government's need for information. As my good friend and colleague Jackson Betts eloquently stated "an individual's right of privacy transcends the rapid growth of technological sophistication in our country and is forever connected with our basic right of liberty. It must never be compromised in favor of well-meaning but nonetheless impersonal intentions of convenience, value, and efficiency."

I greatly enjoyed sharing my views with you on this important subject and I will be pleased to answer any questions you might have in the time remaining. Thank you very much.

INTRODUCING AGRICULTURAL ADJUSTMENT ACT OF 1969

(Mr. MICHEL asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. MICHEL. Mr. Speaker, today I have introduced the Agricultural Adjustment Act of 1969. This bill would have as its purpose, increasing per family farm income, bringing the supplies of cotton, wheat, feed grains, and soybeans into line with current demand, and at the same time, decreasing the taxpayer's costs in maintaining farm programs. This would come about through provisions to provide for an expanded cropland retirement program, the phaseout of current price support and adjustment payments, and the establishment of grants and loans for low-income farmers seeking more gainful employment.

Having served for a number of years on the Agricultural Appropriations Subcommittee, I am well aware of the cost of current payment programs in agriculture. We are currently making outlays of about $3 billion a year in price support and diversion payments to producers of wheat, cotton, and feed grains. This in itself should be a point of concern to all of us, but what is even more distressing to me is the fact that these programs are not doing the job they were intended to do.

Farm parity today stands at 75, two points below the level at the time the current farm bill was enacted. The farm population today is nearly 2 million less than it was at the time these programs were adopted. While carryover stocks of cotton have been cut considerably, stocks of wheat and feed grains are as high or higher than at the time we adopted the act of 1965. I could go on and on in citing figures which would prove that the Food and Agriculture Act of 1965 has not worked. We cannot continue to pour more than $3 billion a year into a farm program which is not working.

As I see it, there are only two ways for farmers to achieve net income: First, through Government payments, or second, through the market system. Government payments have not worked, as I stated earlier, and the taxpayers are not going to continue to be willing to provide this amount of money. The fact that this House imposed a $20,000 limitation on payments in the Agricultural appropriations bill is proof of what I say.

Therefore, my bill would phase-out these Government payments over a 5-year period, allowing the market to function as the determinant of farm income. For those who are concerned about moving to the market system, my bill provides an expanded land retirement program. This would allow these farmers to sit out the transition.

My bill also recognizes that a number of people currently in agriculture do not have the land and capital resources for one reason or another to stay in agriculture. For these people, we would provide them the opportunity to avail themselves of retraining grants designed to make them economic assets to their communities. These retraining grants would place emphasis on retraining rural people to fill current unfilled jobs in their local communities.

While this program would require a continuation of appropriations at approximately current levels over the first 2 or 3 years, by 1975 we can expect costs to be considerably less than current program costs. May I urge each of you to study my bill carefully. Our ability to produce an abundant supply of food and fiber in this country is undoubtedly one of our finest national assets. We must make sure that Federal farm policy does not thwart that ability in the future.

Mr. Speaker, following is a brief résumé of what my bill would provide, along with the text of the bill:

A LONG RANGE FARM PROGRAM FOR WHEAT, FEED GRAINS, COTTON, AND SOYBEANS

(1) The 5-year program would begin January 1, 1971 and run through December 31, 1975. It would amend the Food and Agriculture Act of 1965. The program would provide for a 5-year transitional period during which acreage controls, base acreages, marketing quotas, processing taxes and direct payments for wheat, feed grains, and cotton would be phased out.

(2) Limit the total funds that may be spent on all direct payments for wheat, feed grains, and cotton under the Food and Agriculture Act of 1965 to 80 percent of the amount spent on 1969 crops in 1971, 60 percent in 1972, 40 percent in 1973, and 20 percent in 1974.

(3) Reduce the cost of wheat certificates to processors to 80 percent of the 1969 level in 1971, 60 percent in 1972, 40 percent in 1973, and 20 percent in 1974.

(4) Effective with 1975 crops, discontinue all acreage allotments, base acreages, marketing quotas, processing taxes and direct payments (annual land diversion, compensatory, and certificate) for wheat, feed grains and cotton.

(5) Continue the cropland adjustment provisions of the Act of 1965 with amendments:

A. To require that programs be operated on a competitive bid basis with emphasis on whole farms, and

B. To direct the Secretary of Agriculture to retire at least 10 million acres per year in 1971, 1972, 1973, 1974, and 1975.

The Secretary would announce in advance the maximum acreage to be contracted for each year. If accepted bids do not exhaust this acreage, higher bidders could be offered the opportunity to negotiate contracts at the accepted bid level.

(6) Provide that loan rates for wheat, feed grains, cotton and soybeans, shall be set at *not more than* 85 percent of the previous three-year-average price, beginning with the 1971 crop year.

(7) Prohibit the sale of CCC stocks at less than 150 percent of the current loan rate plus carrying charges, except when sales are offset by equivalent purchases in the open market.

(8) In addition to and conditional on the adoption of items 2, 3, 4, 5: Authorize the Secretary of Agriculture to offer a special transitional program in 1971, 1972, 1973, 1974, and 1975, which would be open to any farmer who has had average gross annual sales of farm products of not more than $5,000 and off-farm income of not more than $2,000 per year for husband and wife for the immediately preceding three years. Such farmers would be eligible to receive one or more of the following:

A. Compensation for acreage allotments and base acreages surrendered to the Secretary for permanent cancellation. (This would apply to all commodities having acreage allotments or base acreages. Such compensation would be in addition to land retirement payments under the cropland adjustment program and would also be available to eligible farmers who wish to surrender their acreage allotments or base acreages without participating in the cropland adjustment program.)

B. Retraining grants of not to exceed $1,000.

C. Adjustment assistance of not to exceed $2,500 per year for two years.

D. Loans under existing credit programs to further facilitate the transition of eligible farmers to more gainful employment.

(9) Authorize the appropriations of such funds as may be necessary to carry out the programs enumerated in this bill.

H.R. ——

A bill to adjust agricultural production to provide a transitional program for farmers, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the Agricultural Adjustment Act of 1969.

DECLARATION OF POLICY

SEC. 2. It is hereby declared to be the policy of the Congress and the purpose of this Act to (a) increase per family farm income; (b) bring the supplies of cotton, wheat, feed grains, and soybeans into line with current demand; and (c) decrease the public costs of maintaining farm programs. To effectuate this policy, programs are herein established to assist farmers in (1) carrying out a voluntary program of soil, water, forest, and wildlife conservations; (2) obtaining a commodity price in the marketplace higher

than levels at which commodity loans are made available by the Commodity Credit Corporation, and (3) achieving the transition and adjustment where necessary to more gainful employment.

TITLE I—EXTENDING AND MODIFYING THE FOOD AND AGRICULTURE ACT OF 1965—PRICE SUPPORTS FOR SOYBEANS—1971 THROUGH 1974

SEC. 101. The Food and Agriculture Act of 1965 (79 Stat. 1187), as amended, is amended by striking out "through 1970" wherever it appears in Titles III, IV, and V and substituting in lieu thereof "through 1974".

SEC. 102. Notwithstanding any other provision of law.

(a) That portion of price support which is made available through loans for the 1971 through 1974 crops of cotton, wheat, corn, oats, rye, barley, and grain sorghum under the authority of the Food and Agriculture Act of 1965 shall not exceed a loan level of 85 per centum of the average price received by farmers, excluding payments made by the Secretary, during the three complete marketing years immediately preceding the calendar year in which the marketing year for such crops begins.

(b) Total price support and diversion payments, including payments in kind, made to farmers by the Secretary under the authority of (i) section 16(i) of the Soil Conservation and Domestic Allotment Act as amended, (ii) sections 101(f) and 103(d) of the Agricultural Act of 1949 as amended, (iii) sections 339 and 379 c, d, and e of the Agriculture Adjustment Act of 1938 as amended, and (iv) section 107 of the Agricultural Act of 1949 as amended shall not exceed—

In 1971—80 per centum of the total of such payments made in 1969.

In 1972—60 per centum of the total of such payments made in 1969.

in 1973—40 per centum of the total of such payments made in 1969;

in 1974—20 per centum of the total of such payments made in 1969.

(c) The Commodity Credit Corporation shall sell marketing certificates for the marketing years for the 1971 through the 1974 wheat crops to persons engaged in the processing of food products in an amount equivalent to the following—

in 1971—80 per centum of the amount for which certificates were sold for the 1969 crop;

in 1972—60 per centum of the amount for which certificates were sold for the 1969 crop;

in 1973—40 per centum of the amount for which certificates were sold for the 1969 crop;

in 1974—20 per centum of the amount for which certificates were sold for the 1969 crop.

(d) Effective only with respect to the 1971 through 1974 crops of soybeans, price supports shall be made available to producers for each crop of soybeans at a level not to exceed 85 per centum of the average price received by farmers during the three complete marketing years immediately preceding the calendar year in which the marketing year for such crop begins.

SEC. 103. Effective with the 1971 crop of cotton, subsection (e) of section 346 of the Agricultural Adjustment Act of 1938, as amended, is amended by changing the second paragraph to read as follows:

"For the 1971 and 1972 crops of cotton, the annual national export market acreage reserve shall be computed by the Secretary and shall be equivalent to the amount of acreage deemed necessary to produce the amount of cotton which is estimated to be exported in the year the cotton is to be marketed."

SEC. 104. Effective with the 1973 crop of cotton, the Agricultural Adjustment Act of 1938, as amended, is amended by—

(a) Repealing section 346, and

(b) Changing the colon to a period in subsection (c) of section 347 and deleting the provisio.

TITLE II—TERMINATION OF EXISTING COTTON, WHEAT, AND FEED GRAIN PROGRAMS: ESTABLISHMENT OF PRICE SUPPORT PROGRAM FOR COTTON, WHEAT, FEED GRAINS AND SOYBEANS FOR THE 1975 AND SUBSEQUENT CROPS

SEC. 201. Notwithstanding any other provision of law, effective with the 1975 crops of cotton, wheat, corn, oats, rye, barley, and grain sorghum—

(a) sections 321 through 350 of parts II, III, and IV of subtitle B and section 379(a) through 379(j) of subtitle D of title III of the Agricultural Adjustment Act of 1938, as amended (52 Stat. 31; 7 U.S.C. et seq.), are repealed, parts V and VI of subtitle B are redesignated as parts II and III, respectively, and subtitle F is redesignated as subtitle D; and

(b) subsection (i) of section 16 of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590p), as amended, is repealed.

SEC. 202. Effective with the 1975 crop of wheat, the Act of May 26, 1941, as amended (Public Law 74, Seventy-seventh Congress, 55 Stat. 203), is repealed.

SEC. 203. Effective with the 1975 crops of wheat, corn, oats, rye, barley, and grain sorghum, section 327 of the Food and Agriculture Act of 1962 (Public Law 87-703, Eighty-seventh Congress) is repealed.

SEC. 204. Effective with the 1975 crops of cotton, wheat, corn, oats, rye, barley, grain sorghum, and soybeans, the Agricultural Act of 1949, as amended (7 U.S.C. 1421), is amended by:

(a) Changing section 103 (7 U.S.C. 1421 (d)) to read as follows:

"SEC. 103. Notwithstanding the provisions of section 101 of this Act, price supports shall be made available to producers for each crop of cotton, wheat, corn, oats, rye, barley, grain sorghum, and soybeans at a level not to exceed 85 per centum of the average price received by farmers, excluding payments made by the Secretary, during the three complete marketing years immediately preceding the calendar year in which the marketing year for such crop begins."

and

(b) Repealing sections 105 (7 U.S.C. 1441 note), 107 (7 U.S.C. 1445(a)), 402 (7 U.S.C. 1422), and subsection (f) of section 101 (7 U.S.C. 1441(f)).

TITLE III—RESTRICTIONS ON SALES BY THE COMMODITY CREDIT CORPORATION

SEC. 301. Section 407 of the Agricultural Act of 1949, as amended (7 U.S.C. 1427), is amended—

(a) by changing the period at the end of the fourth sentence to a colon and adding the following: "*Provided*, That, notwithstanding any other provision of law, beginning August 1, 1971, the Commodity Credit Corporation shall not make any sales (except sales offset by equivalent purchases, but including sales made in redemption of payment-in-kind obligations of the Commodity Credit Corporation under its programs) of its stocks of cotton, wheat, corn, oats, rye, barley, grain sorghum, or soybeans at less than—

"(1) 150 per centum of the then current loan rate for such commodity, plus reasonable carrying charges, or

"(2) the market price for such commodity at the time of sale,

whichever is higher."

(b) effective August 1, 1971, by deleting the seventh sentence and the last four sentences.

TITLE IV—AN EXPANDED CROPLAND ADJUSTMENT PROGRAM

SEC. 401. Section 602 of the Food and Agriculture Act of 1965 (7 U.S.C. 1138) is amended—

(a) by changing "1970" to "1975" in the first sentence of subsection (a).

(b) by deleting ", unless he determines that such action will be inconsistent with the effective administration of the programs," from the first sentence of subsection (d).

(c) by adding before the period at the end of the first sentence of subsection (d): "and shall encourage the inclusion of whole farms in such agreements. The Secretary shall announce in advance the maximum acreage of land to be contracted for each year; and if accepted bids do not achieve this maximum, the Secretary may offer higher bidders the opportunity to negotiate agreements equivalent to the accepted bid level: *Provided*, That, in determining annual maximum acreages, the Secretary shall design a program to obtain the retirement of not less than 10 million acres per year during the period 1971 through 1975"

(d) by deleting subsection (k)

(e) by redesignating the subsections in accordance with the amendments of this title.

TITLE V—FARMER ADJUSTMENT AND RETRAINING PROGRAM

SEC. 501(a) For the purpose of providing a transitional program to assist low-income farmers in making the necessary adjustments to nonagricultural pursuits and to provide opportunities for gainful employment, the Secretary of Agriculture is authorized to formulate and carry out a program during the calendar years 1971 through 1975 under which agreements would be entered into with farmers who—

Had average gross annual sales of farm products of not more than $5,000; and

Had average annual off-farm income of not more than $2,000 (including income of both husband and wife in the case of a married farmer)

during the three-year period immediately preceding the year in which the agreement is entered into.

(b) Agreements entered into under this section may include: (1) the surrender to the Secretary for permanent cancellation of acreage allotments and base acreages then under the control of the farmer in return for cash consideration in an amount determined to be appropriate by the Secretary; (2) adjustment assistance not to exceed $2,500 per year for a period not to exceed two years; (3) retraining grants for the purpose of covering tuition and other costs incident to training programs designed to provide skills deemed to be consistent with employment opportunities.

(c) The Secretary shall, in achieving the objectives of this section, utilize to the maximum extent possible existing federal and state programs designed to provide grants, loans, and other assistance which will further facilitate this adjustment program.

(d) The Secretary shall prescribe such regulations as he deems necessary to carry out the provisions of this title.

SEC. 502. The Commodity Credit Corporation shall not make any expenditures for carrying out the purposes of this Act unless the Corporation has received funds to cover such expenditures from appropriations made to carry out the purposes of this Act. There are hereby authorized to be appropriated such sums as may be necessary to carry out the program, including such amounts as may be required to make payments to the Corporation for its actual costs incurred or to be incurred under this program.

CLAREMONT EAGLE CHEERS NIXON ADDRESSES ON PATRIOTISM

(Mr. CLEVELAND asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. CLEVELAND. Mr. Speaker, it is

with pleasure that I draw to the attention of the House the following editorial from the Claremont, N.H., Eagle. In recent days, certain persons and parties who have never been friendly to the President, have pounced upon a couple of the President's speeches—both of which were well-reasoned, stately, timely, and fair addresses.

In these two speeches, patriotism was defended and the role of the professional fighting man extolled. This was especially pleasing. Throughout history the soldier and the sailor have been despised, kicked around, underpaid and scorned—until trouble came and overnight they became valiant heroes.

Well, we are in trouble now. It ill behooves those who attack the military to do so when it is the professional fighting man who defends—and often dies for—their privilege to attack him.

It is entirely proper for the President—the Commander in Chief—to recognize the patriotism and dedication of the professional fighting man. Indeed, it was good to hear him do so and to extoll good, old-fashioned love of country.

I agree with this editorial 100 percent and am pleased to put it in the RECORD in the hope that it will catch many other responsive eyes. I think it represents the thinking of most of the people in my part of the country and I hope the rest of the country.

It is good to have a President again who gives voice to the reasoned patriotism of the vast majority.

The editorial follows:

NIXON ON THE UNIFORM AND ISOLATION

President Nixon's first two addresses since assuming office which have had much grit have stirred both interest and the wrath of the liberals who have been waiting to tag "the new Nixon" with "the old Nixon."

Nixon's first address properly scored "those among us" who would urge unilateral disarmament pacts and treaties and other acts weakening America's now traditional peacekeeping role abroad.

In another talk, at the Air Force Academy, he properly scored the current fad which down-grades civic patriotism generally and the military and the uniform, specifically.

Nixon hit the nail on the head when he pointed out that the radicals attempting to destroy ROTC campus programs in civilian-oriented colleges are driving the military to enlarge their own military-oriented institutions to provide the nation with professional "officer corps."

The anger of the McGoverns and the Fulbrights, not to mention the pitiful McCarthy, is understandable when these sincere, but misguided senators were pegged as isolationists.

The President dug up the little-known fact that the late President Eisenhower's now famous warning to the nation about a growing power of the "military industrial" establishment was followed up with an equally succinct warning that the military must never be hobbled, downgraded or that a man of any rank need ever be ashamed of wearing a uniform.

What Nixon might have also said in both his graduation day addresses, is that much of the unrest and problems facing the nation today is the product of the teaching currently in vogue in most of our college and university campuses where the traditionalism and basic values previously carried from one generation to another are "out."

Now, faculties are finding for themselves that their own permissiveness has led to student anarchy.

CONGRESSIONAL REFORM AND COMPUTER UTILIZATION

(Mr. CLEVELAND asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. CLEVELAND. Mr. Speaker, I would like to call the attention of my colleagues to an address by Robert L. Chartrand, Information Sciences Specialist for the Legislative Reference Service of the Library of Congress, before the Symposium on Computer Utility cosponsored by the National Science Foundation, the Interuniversity Communication Council, and the Whittemore School of Business and Economics of the University of New Hampshire. The symposium was held for 3 days, May 5 through May 7, 1969, and attracted more than 150 representatives from universities, State and local governments, foundations, and industrial firms. The purpose of the symposium was to present authoritative opinions on the potential impact of regulated computer utilization on those areas where computer use interfaces with such fields as education, urban planning, and the legislative process. The conference director was Prof. Michael Duggan of the University of New Hampshire, and the sessions director was Dr. Manley R. Irwin, also of the University of New Hampshire.

Electronic data processing methods of handling information are of increasing concern to us in Congress. I am pleased to call attention to Mr. Chartrand's report on progress in some phases of machine support inside the Congress. It follows:

CONGRESS CONSIDERS COMPUTERS

Throughout the world the much-vaunted potential of the computer has stirred comment and argument. The impact upon all elements of our civilization is undeniable, and the future expansion of this technological influence seems inexorable. Electronic wizardry is a fact of daily life, manifested in the crediting of purchases, the rate of progress through traffic, the maintenance of countless records about each human being. Some persons believe that the computers of tomorrow will allow man to exist in utopian leisure, but this is refuted by those who perceive the inevitable demands upon those who would master their milieu. Listen to the words of Norbert Wiener:

"No, the future offers very little hope for those who expect that our new mechanical slaves will offer us a world in which we may rest from thinking. Help us they may, but at the cost of supreme demands upon our honesty and our intelligence. The world of the future will be an even more demanding struggle against the limitations of our intelligence, not a comfortable hammock in which we can lie down to be waited upon by our robot slaves."

With this admonition in mind, let us turn to the dilemma of those who share in the governing of our nation—the United States Congress. Charged to represent more than 200 million citizens, this beleaguered band of 535 Representatives and Senators strives to cope with an array of problems both mundane and exotic. Constituent demands vie with committee responsibilities and the all-important duty of casting the legislative vote. Never is there enough time. All too few the loyal staffers to share the load. And always that load is mounting . . . mounting apace with the volume of mail to be answered, the visits and telephone calls to be handled, the sheer number of persons to be serviced. Again and again the cry is heard: how can we do things better?

There is, of course, no panacea for the struggling congressional office. It is true that additional staffing and space can help, but the flood of information which comes to and is needed by members and their assistants must be coped with in the near future. In many cases, key information is difficult to locate and obtain. On the other hand, there is a plethora of material which arrives, often unsolicited, in every congressional office. At this juncture, alert "hill dwellers" may ask the questions which re-echo in the committee rooms and member quarters: can the computer help? Can this systems analysis that we hear so much about give *us* a break?

INITIAL LEGISLATIVE PROPOSALS

Congressional sensitivity to the potential of the computer and systems methodology has increased considerably since the early 1960's when the then Senator Hubert H. Humphrey was exhorting his colleagues to understand how computers could assist the Congressman in his daily chores. The first bill calling for the creation of an automatic data processing facility exclusively for Congress was introduced by Representative Robert McClory of Illinois late in 1966. During the 90th Congress (1967–1968), several proposals were put forward. While more than a dozen House bills called for the establishment of the congressional ADP capability within the legislative Reference Service of the Library of Congress, Representative William S. Moorehead of Pennsylvania opted for an independent facility which would be under the jurisdiction of a Joint Committee on Legislative Data Processing. The Reorganization Act of 1969, originally prepared as the result of the work of the Monroney-Madden joint committee, emhasizes the importance of modernizing congressional information handling in several of its recommendations. First, the proposed Joint Committee on Congressional Operations would be responsible for "continuing study of automatic data processing and information retrieval systems for Congress." Second, the Comptroller General, the Secretary of the Treasury, and the Director of the Bureau of the Budget would be responsible for the development, establishment, and maintenance of a "standardized information and data processing system for budgetary and fiscal data for use by all Federal agencies." Third, the Legislative Reference Service was "authorized to perform machine operations and acquire automatic data processing equipment and personnel for that purpose."

This, then, was the period of orientation and awakening to what might be done with computers. Those knowledgeable about the capacities of equipment and "software" program testified that many applications had been fully developed which could assist Congress in its day-to-day functions. Included were the retrieval of topical research information on the basis of searching textual material; an example might be a query calling for passages or citations pertinent to the subject of "transportation planning." Legal type information—the United States Code or the Supreme Court decisions—also has been of high interest and value to the Congress, and has been the subject of concentrated systems development by the University of Pittsburgh Health Law Center and the United States Air Force Accounting and Finance Center as part of Project LITE (Legal Information Through Electronics).

Also of continuing concern to various legislative elements is authorization and appropriations narrative and statistical information. While the Bureau of the Budget has commenced placing some of its budgetary data on magnetic tape, no action has been taken to make machineable files available to interested committee members. Infor-

mation on committee and subcommittee activity—date and place of hearings, witnesses to appear, topics to be discussed—is needed and would lend itself to ADP handling. The list is not a short one, and is limited only by the imagination and industry of those responsible for improving the operation of Congress.

ACTION IN THE 91ST CONGRESS

Activity in the 91st Congress has reflected the transition from a period limited to casual awareness to one featuring a resolve to create an actual computer-centered systems capability. Early in the first session, Representative John Brademas of Indiana prepared a resolution which later was endorsed by the Democratic Study Group and the Democratic Caucus:

"Resolved, That the Committee on House Administration be fully supported by Democratic members in efforts to improve the efficiency of operations of the House of Representatives, and we urge that these efforts include, but not be limited to, the use of computers and of a centralized mail processing system."

The intent here was to devise a course of action which would allow a careful review of existing ADP activities within the legislative branch, and provide for a coordinated planning of their future development and mutual supportability.

At the present time, there are three established facilities within the legislative branch. The Office of the Clerk of the House of Representatives operates an NCR Century 100 computer, located in the Rayburn House Office Building, which is used for payroll operations and such housekeeping tasks as the maintenance of inventories of equipment. The Senate Sergeant-at-Arms office has an IBM 360 Model 20, soon to be enlarged to a Model 40, which is used exclusively in mailing operations. It should be noted that the Clerk of the House has taken steps to establish a mailing operation comparable to that of the Senate, and has received proposals from industry. The Library of Congress computer, an IBM 360 Model 40, features the capacity to handle routine "batch processing" functions and a series of 20 remote typewriter terminals. All but one of these are situated in the Legislative Reference Service, where they are used for insertion, editing, and recall of various types of data (e.g., public bill and resolution content and status). The other terminal is located in the House Banking and Currency Committee, where it is employed in handling legislative calendar information, and other selected tasks.

The need to assign authority and responsibility for the development of a congressional ADP capability motivated Representative Jack Brooks of Texas to introduce a bill (H.R. 404) requiring the Comptroller General to "develop, establish, and maintain data processing and information systems necessary for the effective and efficient fulfillment of the substantive responsibilities of the Congress." It has been emphasized that the projected congressional information system for handling fiscal and budgetary information would not duplicate the system under development by the Bureau of the Budget. The Comptroller General, Elmer P. Staats, in testimony before the Subcommittee on Government Activities of the House Committee on Government Operations (on April 23, 1969) reflected an understanding of the size of the task suggested for GAO. He noted that the creation of such a system perhaps should be "the responsibility of the Congress itself in order that it could have complete control over the system and thus be assured that its needs will be fully served."

The proper role of each of the involved elements of the legislative branch also was a subject for discussion by the House Committee on House Administration, which assigned responsibility for investigating the potential of ADP for the Congress to the Special Subcommittee on Electrical and Mechanical Office Equipment.

PRIVATE SECTOR ANALYSES

Discussion and introspection on the impact of computers and a more systems oriented approach to congressional information handling has not been limited to the public sector. One of the most worthwhile pioneering undertaking in the private domain was the publication of a series of scholarly monographs by the American Enterprise Institute for Public Policy Research. The volume, entitled *Congress: The First Branch of Government,* featured the commentary and recommendations of such political scientists as James A. Robinson, Charles R. Dechert, and Kenneth Janda. This trio focussed upon the nature of congressional decision-making, the role of information in the formulation of alternatives and eventual decisions, and the possible contributions to be made by using advanced tools and techniques.

During the same period (1965–1966), a "Management Study of the U.S. Congress" was prepared by Arthur D. Little, Inc. Commissioned by NBC News, the investigating team analyzed the functioning of Congress, and made certain recommendations concerning the organization, staff support, committee procedures, and analytical capabilities of the Congress. These were transformed into a television feature called "Congress Needs Help" and later appeared under that title in book form.

As the subject of congressional effectiveness gained greater public attention and publicity, a number of documents began to appear containing opinions on the role of technology, as well as other changes which might be effected, in the Federal Congress. Industrial firms prepared proposals for designing and implementing a computer system for the Congress. General studies looking at the application of electronic technology to diverse activity areas were written, sometimes at the request of congressional members or committees. These ranged from "Automatic Data Processing and the Small Businessman" and "Systems Technology and Judicial Administration" to "The Federal Data Center: Proposals and Reactions." The Republican Task Force on Congressional Reform and Minority Staffing drew upon the experience of nearly a score of members to write a book entitled *We Propose: A Modern Congress,* which featured a chapter on the use of ADP by Representative Fred Schwengel of Iowa.

At the beginning of the 90th Congress, the Brookings Institute played host to a group of Representatives who sought a forum in which to discuss informally the need for better ways of performing their legislative and constituent support tasks. Special seminars for congressional staff members also were organized by the Legislative Reference Service. The need for an exploratory discussion involving academicians, industrial analysts, and Federal government information specialists was recognized by the American Enterprise Institute, which sponsored a two-day meeting featuring a dual objective: to discuss the broad subject of information support—the requirements, the relevant counterpart systems, the state-of-the-art—for our legislators, and secondly, to look at the impact of the Federal Planning-Programming-Budgeting System on congressional appropriations activity. The results of this gathering were published under the title *Information Support, Program Budgeting, and the Congress,* and represent both formal expressions of opinion by qualified persons and a record of intensive dialogue. The participants were in agreement as to the criticality of providing those who govern: ". . . maximum resources to define objectives, formulate programs, allocate manpower and moneys, and identify alternative courses of action."

UNDERSTANDING THE ROLE OF ADP

One of the aspects of computer support which has arisen again and again is that of cautioning decision-makers *not* to ignore those problem elements which defy computerization. Concern for this matter was voiced by Dr. Donald N. Michael when he said that:

"Already planners and administrators are tending to place undue emphasis on—that is, coming to value most—those aspects of reality which the computer can deal with just because the computer can do so. The individual—the point off the curve—becomes an annoyance."

While members of Congress have evinced an interest, indeed worry, about the establishment and growing assertiveness of the Federal PPB System, they have examined the impingement of that system of their own fiscal deliberations in only the most minimal way. The whole question of which agency is spending how much money on what program is very much in the legislative spotlight, but the stress on information control has been random at best. On one hand, there has been a call for the regular issuance of a catalog on Federal assistance programs (led by Representative William V. Roth of Delaware); on the other, many members have urged the establishment of an Office of Program Analysis and Evaluation. Implicit in these and other recommendations is the use of sophisticated management strategies and data handling techniques.

If the underlying problem is that of information acquisition and control—and this is not to ignore the predicaments brought about by having to file, manipulate, and retrieve desired data—there needs to be a close scrutiny of the sources available to the Congress for its information. Closest to the member are his office files, usually known only to one or two longtime staffers. Next, he may turn to the non-partisan Legislative Reference Service, which in 1968 received more than 130,000 requests for information from congressional members, committees and constituents. Executive branch agencies also provide numerous reports and isolated items of information. The Congressman also may choose to obtain requisite information from lobbyist groups, universities, or business and commerce institutions. The sources are many, their willingness to support the legislator unflinching for the most part, but the system is haphazard.

As the Congressmen attempt to orient themselves to the potential of ADP, they may look at the experience of the business community or of certain state legislatures. In the past few years, several states have moved aggressively to use computers and systems analysis in their legislative and administrative activities. New York, Pennsylvania, Florida, Wisconsin, Iowa, to name a few, have utilized consultant expertise and the latest in hardware-software configurations to allow members of the legislature to draft bills, have access to current committee activity information, query the computer regarding bill content and status, and draw upon specially formatted budgetary data when needed. The lesson is a good one, both in terms of the benefits being derived from an ADP-centered system and the limitations of this type of support.

THE POTENTIAL FOR THE CONGRESS

A highlight of several large information systems which has attracted congressional attention is the ability to access computer files from distant locations, with very little delay in entering or extracting desired information. "Time-sharing" has added a new dimension to information processing, and the knowledge on the part of Congressmen that they could sit in their offices or committee rooms and interrogate a computer and almost immediately receive answers to their queries has been exhilarating. Time and space have been conquered, and priority information can be at their fingertips.

A challenge still remains. The university researcher, the industrial designer, the governmental systems man—each has expertise gained as the result of training, trial and error, and sustained interaction with his peers. It is imperative that this knowledge and energy be applied to the initiation of innovative methods for improving our governmental functions. Decision-making remains an art rooted in the science of information management. The United States Congress, in confronting the domestic and international pressures of our times, must strive to improve its own capacity to cope with these problems. Technology is a known quantity which, if properly applied, can offer positive support to the legislators as they ponder the vote-casting alternatives, function as effective committee members, and continue to render assistance to the citizenry of the Nation.

CRIME ON THE STREETS

(Mr. BARRETT asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. BARRETT. Mr. Speaker, the people of this Nation, particularly those living in urban areas, must have and have a right to have a decent safe environment. The streets and neighborhoods must be safe. This is basic to a decent living environment.

Unfortunately, however, we are informed that the incidents of crime in our cities are on the increase, particularly those perpetrated by the youth, individually and in gangs. The juvenile gang situation in Philadelphia has become acute. Fights between youth gangs are almost a daily occurrence and 24 youths have been killed since the first of the year.

The members of the Philadelphia congressional delegation are gravely concerned over the situation and fear that the Federal and State Governments are not taking the necessary actions to assist the city to combat this problem.

The Philadelphia Inquirer yesterday, in reporting on the testimony of Philadelphia's outstanding police commissioner, Frank L. Rizzo, before the State crime commission, said that there are 77 youth gangs in the city having a membership of from 300 to 800 youths. Commissioner Rizzo has accurately portrayed the youth gang problem and suggested specific changes to deal with it; one of which is the employment of gang control workers from the ghettos who know gang members best and are able to work with them. Funds for this purpose can and should be provided under the Omnibus Crime Control and Safe Streets Act of 1968. The Department of Justice should act now to provide these funds before the situation worsens.

Yesterday's Inquirer also contained an excellent editorial on this matter which I include for all to read:

WE MUST STEM THIS TIDE

Police Commissioner Rizzo, as the first witness at the State Crime Commission's hearings on youth gang violence in Philadelphia, put the urgency of the problem in proper perspective at the outset when he said:

"Let us not propose another crime survey. My filing cabinets are jammed with surveys and reports. The time for surveys and studies is past. The time for action is now."

The police commissioner gave realistic dimension to the subject matter of the hearings in these words: "Gangs are a part of the overall juvenile crime problem . . . In the city of Philadelphia today, about fifty percent of all persons arrested for serious crime—robberies, rapes and homicides—are juveniles."

He zeroed in on the immediate need when he told the commission: "The war against crime must start at the juvenile level. The juveniles roaming our streets today are the criminals of tomorrow. We must stem this tide with a policy of punishment to fit the crime. The city's criminals, juvenile and adult, must realize that if they break the law, they will be punished severely."

To accomplish this requires community cooperation—especially from the courts and the correctional institutions. Mr. Rizzo pinpointed the present difficulties in forthright language that goes right to the heart of the matter: "Because of the deficiencies in our detention system, judges are compelled to release juvenile offenders they might otherwise detain. Thus, the hard-core juvenile criminal is returned to the streets, free to arm himself with a gun or knife and kill. This is one of the causes of the sharp increase in gang-related slayings here. On the other side of the coin, we have a few judges who, under the guise of rehabilitation, would return any juvenile offender to the street, whether detention facilities are available or not. Pure and simple, this is a deadly game of Russian roulette, with the citizens of Philadelphia as the potential victims."

Referring to the problem of overly lenient probation policies, the police commissioner noted: "In the past, I have asked judges of the Family Court to revoke the probation of juveniles arrested for another crime. The judges have not done this. I feel that this inaction has permitted additional gang members to roam the streets, increasing the possibility of violence."

Commissioner Rizzo, in his accurate portrayal of the youth gang problem in its various manifestations, and in his specific proposals for changes in the law and in court procedures to facilitate the confinement of juvenile hoodlums and the protection of the public, has pointed the State Crime Commission hearings in the right direction.

TRIBUTE TO JAMES CHANEY, ANDREW GOODMAN, AND MICHAEL SCHWERNER

(Mr. RYAN asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. RYAN. Mr. Speaker, 5 years ago I rose in the well of the House to report that three young Americans engaged in making political democracy a reality in Mississippi had been reported missing on June 21, 1964. Later the three—James Chaney, Andrew Goodman, and Michael Schwerner—were found murdered, the victims of accumulated hatred and intolerance in Mississippi.

Because the sacrifices these three young men made continue to have meaning for us today, let me briefly discuss the circumstances of their death and the political climate which made possible their murder.

Andrew Goodman and Michael Schwerner went to Mississippi to conduct voter registration drives and to open freedom schools under the auspices of the Council of Federated Organizations, an alliance of several civil rights groups which included the Congress of Racial Equality, the Southern Christian Leadership Conference, the National Association for the Advancement of Colored People, and the Student Nonviolent Coordinating Committee.

Along with other volunteers, Andrew Goodman and Michael Schwerner were preparing to offer courses of study designed to make possible greater freedom for Negroes in Mississippi—courses in the humanities, liberal arts, mechanical training, and the rights and duties of citizenship.

Michael Schwerner and his wife, Rita, had opened one of the first two freedom schools in Mississippi. The school was housed in a five-room structure in Meridian and included a library of some 10,000 books which were available to everyone in the community.

These three—Michael Schwerner, Andrew Goodman, and James Chaney, a young Negro from Mississippi—had committed themselves to realizing political equality in Mississippi.

On June 21, 1964, they were brutally murdered.

At the time of their deaths, Congress had not yet passed the Voting Rights Act of 1965, nor even the Civil Rights Act of 1964. Negroes in Mississippi were barred from public accommodations, discriminated against in education and employment, and denied the guarantees and Federal protection established by the civil rights legislation which followed. They faced the bitterness of white citizens unwilling to concede political equality to Negroes, and a society seeking to maintain segregation as a way of life. Yet they risked and eventually lost their lives to carry on the important work of voter registration and education despite these obvious hazards.

The deaths of James Chaney, Andrew Goodman, and Michael Schwerner demonstrated to Congress the urgent need for Federal intervention in Mississippi and other areas of the South. Their sacrifice hastened the passage of the Voting Rights Act of 1965. Where they and other civil rights workers led the way into a hostile political environment, Federal registrars and election observers have followed. And the assumption of responsibility by the Federal Government for enforcing the guarantees of the 15th amendment is bringing about profound changes in the political life of the South.

On the date of the enactment of the Voting Rights Act in 1965, some 856,000 adult Negroes were registered to vote in Alabama, Georgia, Louisiana, Mississippi, South Carolina, and Virginia. As of the summer of 1968, 1,596,000 were registered.

Before the Voting Rights Act, only 31 percent of the voting age blacks in the 13 States of the old Confederacy were registered. As of the summer of 1968, 62 percent were registered.

But much remains to be done. Although 62 percent of voting age Negroes are now registered in the 13 States of the Old South, 78 percent of the white voting age population is registered. In the six States directly covered by the act, only 57 percent of the nonwhite voting age population is registered, as opposed to 79 percent of the white voting age population.

A comparable measure of the progress attained under the Voting Rights Act is the increase in black elected officials in the South. Before 1965, there were approximately 70 elected black public officials in the South. Today, there are nearly 400, of whom 286 are in the six States fully covered by the act, and North Carolina, which is partially covered.

Similarly, while 18 black people are now members of Southern States legislatures, no black person has yet been elected in Alabama or South Carolina, and only one has been elected in Louisiana, Mississippi, North Carolina, and Virginia, respectively. Instances of political harassment and intimidation of blacks seeking to register or vote continue to be reported.

During the past few months, Subcommittee No. 5 of the House Committee on the Judiciary has been considering legislation introduced by several Members of Congress, including myself, which would extend the coverage of the Voting Rights Act for another 5 years. In addition to myself, numerous individuals—including Julius Glickstein, acting director of the Commission on Civil Rights, and our colleague from Michigan (Mr. CONYERS)—have testified to the need to extend the coverage of the act for at least 5 additional years, and urged that the Judiciary Committee send legislation which would accomplish this to the floor of the House.

Thus far, however, consideration of the bill by the full committee has been delayed by the failure of Attorney General John Mitchell to appear before the subcommittee, on five different occasions now, the Attorney General has agreed to appear before the subcommittee, only to subsequently request a postponement of his scheduled appearance. The distinguished chairman of the Judiciary Committee, the gentleman from New York (Mr. CELLER), has extended a sixth, and, I understand from the press, final, invitation to the Attorney General to testify on Thursday of this week.

Although the exact content of Attorney General Mitchell's testimony is not known, it is expected that he will propose that the Voting Rights Act of 1965 be amended to abolish literacy tests nationwide, and delete section 5 of the act, which requires that a State covered by the act obtain approval from the Federal District Court of the District of Columbia before enacting changes in its election laws or procedures. While I support the nationwide abolition of literacy tests, I believe such legislation must not be allowed to frustrate the principal purpose of the Voting Rights Act of 1965, which is to provide Federal intervention in the States covered on behalf of the disadvantaged and disenfranchised and to insure that the guarantees of the 15th amendment will be enforced. The provisions of section 5, which provided the basis for a major U.S. Supreme Court decision, *Allen* v. *State Board of Elections* (37 U.S.L.W. 4168, Mar. 4, 1969), must be retained as a guarantee that new discriminatory election procedures will not be adopted by the States covered by the act.

As the statistics which I have cited earlier demonstrate, much remains to be done if political equality is to become a substantive reality in the South. As a consequence, it is imperative that the provisions of the Voting Rights Act be extended for at least 5 more years.

Faced with hostility and the threat of violence, James Chaney, Andrew Goodman, and Michael Schwerner nevertheless dedicated themselves to the task of making all American citizens—regardless of color—citizens in the real sense of the word. Their sacrifice should inspire the Congress to insist that the Federal Government continue to provide assurances against political discrimination until equality has become a reality in the South.

OIL TAXES

(Mr. WAGGONNER asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. WAGGONNER. Mr. Speaker, in an effort to refute some of the claims and misstatements that have been made about the oil and gas industry, the Oil & Gas Journal of Tulsa, Okla., recently published an open letter containing many valuable and basic facts about the oil and gas industry. I feel that a careful reading of this communication will dispel some of the erroneous charges advanced by the opponents of the oil depletion allowance.

Many of you, I am sure, have questioned some of the alleged facts which have been thrust upon the ordinary citizen regarding taxes derived from the oil and gas industry. Comparatively speaking, only a small part of the industry's story has been related to the persons whom a reduction in the allowance will affect most—the taxpayers whose daily consumption of oil and gas products forms a vital segment of our economy.

These products are an integral part of the multifaceted lives of 20th-century men. It is impossible to conceive of any business or personal activity which does not demand an ever-increasing supply of petroleum products and services. Our constantly dwindling crude oil and gas reserves could pose a very serious threat to our national security, particularly with the unrest existing in the world today.

So that I might share with my colleagues another side of the story—the industry's position—I include the open letter as part of my remarks:

OPEN LETTER

To: The U.S. voter.
Subject: Oil taxes.

Percentage depletion has been on the federal law books for 43 years. And for 36 of these years, it has been vociferously attacked as an unfair "loophole" for avoiding taxes. It's happening again.

The attackers have been highly placed: Former presidents, cabinet members, lawmakers, college professors. As well as unwashed radicals, uninformed housewives, and entertainers who make poor jokes.

Congress through it all has refused to junk the provision or even modify it.

Why have the attacks by so-called tax reformers failed?

Several reasons.

Opponents haven't advanced a single new argument that wasn't thoroughly considered prior to passage of the 1926 measure. Congress consistently has decided benefits outweigh costs.

Depletion also is tied closely to the basic concepts of our constitution. These are: Never tax capital. Tax only the income from capital. Taxing away capital is likened to killing the goose that lays the golden eggs.

Why then do the attacks persist?

Taxes are pinching everyone. They always go up. Never down. The bureaucratic taxer-spenders as well as tax-burdened companies and individuals are eager to shut off tax avoidance to ease the pinch. It's easy to level an emotional diatribe against depletion and then hoot down any reasoned explanation of the complex issue.

That's why we must examine the issue constantly.

Percentage depletion has two objects: Recover the producer's capital. And give him an incentive to drill more wells, find more oil.

How does it work?

Stripped of its emotional setting, percentage depletion is simply a deduction available to oil and gas producers—and producers of more than 100 other minerals—in figuring their taxes on income from wells.

The producer may deduct 27½% from the gross annual income of a lease or property. This is tax free. The figure, however, may not exceed 50% of the net income of the lease. This limitation actually prevents most producers from taking the full deduction. In practice, it averages only 23% and in many cases is much less than that.

This policy recognizes that oil in the ground is part of the producer's capital. It is like real estate. But this capital is used up—or depleted—by operation of an oil or gas well. The rate of deduction, when determined 43 years ago, was estimated as equal the capital value of oil in the ground. It's now probably less, and a higher rate would be more equitable.

Opponents, however, favor stripping depletion back until it assures the producer he will recover his actual investment or costs in a lease. After this amount is recovered over a period of time, deductions would end. The producer's income taxes would increase. Thus cost depletion would serve a function similar to depreciation.

This overlooks the unique position of oil as capital in the ground. It also ignores the unusual risks involved in finding replacement petroleum. Depeletion encourages the producer to hunt new reserves—depreciation doesn't.

Say, for an example, an oil man recovered only has lease costs by deductions. He has no assurance he can take this fund, drill a single well and come up with any oil or gas. The odds are he will drill nine dry holes for every producing well. And what's more, he'll drill 46 marginal wells to every 1 that nets out a profit. Depreciation funds would melt quickly under these odds. But depletion funds from one good well give a producer the financial staying power to keep drilling.

What would happen if percentage depletion were ended?

It would drastically curtail the hunt for oil and gas. Our reserves would dwindle even more. Why? Because operators would become more selective and cautious in their drilling plans. They'd drill only the better prospects, shun the costly and high-risk ones.

Many producers would sell out and take advantage of the more favorable tax rates on capital gains from oil in the ground. They would thus escape the high regular rates on production. The buyer, in turn, would set up to deplete at 100% of his cost. So, it's difficult to see how the government could reap a tax bonanza from this change.

Consumers of petroleum products would suffer, too. The cost of crude oil and natural

gas would rise. This inevitably would be translated into higher product prices.

Whey then disturb a policy that promises to cause such an upheaval when the benefits are so uncertain?

But the critics cry: "Some companies pay no income tax at all. That's unfair."

Let's examine this one carefully. It comes up every time taxes are mentioned. It's becoming cause celebre among oil-industry critics.

In the first place, any producer who completely escapes income taxes doesn't do so with percentage depletion alone. The "50%-of-net-income" limitation prevents that. So, he must use the benefits of other deductions—most likely the expensing of intangible drilling costs and write-offs for dry holes.

By way of explanation, drilling costs come in two kinds. Tangible drilling costs, such as cost of tanks, equipment, and structures, are depreciated over the years. No argument here. Intangible costs, such as expense for wages, fuel, repairs, and all services, may be recovered the same way or as an operating expense in the year incurred. Most oil men elect to expense the intangibles. This allows them to get their money back more quickly to use in further operations. Expensing of intangibles does reduce the net income of the lease, even may create a loss. All this reduces the total subject to income tax.

There are a few facts, however, to keep in mind. The producer can deduct intangible expenses only once. They tend to reduce benefits of percentage depletion. And the producer, in order to have intangible deductions, must keep on drilling. This is exactly what the tax policies are designed to do—keep oil men drilling.

What else do critics find wrong about percentage depletion? What do they suggest?

Here are a few, and the answers to them.

Depletion allows companies to offset income from other sources, escape more taxes.

Percentage depletion cannot reduce taxable income from any source except the one lease or property on which it is computed. Oil companies aren't escaping taxes even if the bite of the income tax is lighter on them. It may surprise many to know that the total tax burden of the petroleum industry actually is heavier than average. In 1966, oil paid $2.5 billion in direct taxes. This $2.5 billion amounted to 5.1% of gross revenue from all operations. The direct tax burden for all U.S. business corporations was only about 4.5% of gross revenue. This is about 10% less than the tax burden of petroleum. That plays hob with the contention that oil companies don't pay taxes.

Oil profits are exorbitant. Too many oil millionaires are created by percentage depletion.

The average profit of 99 oil companies in 1968 was equal to a 12.9% return on net worth. This is below the 13.1% return on net worth earned by 2,250 manufacturing companies. There's certainly nothing exorbitant about this. Percentage depletion hasn't made oil millionaires. Oil fortunes rise from the combination in an individual of ability, stubbornness, and luck in finding oil. Success in finding oil is the key—not percentage depletion.

Oil producers don't use tax savings to look for more oil and gas.

The figures show differently. Statistics indicate oil producers would pay $1.3 billion more annually in taxes if present policies were ended. In the last 10 years, they have spent this—plus an average $3.1 billion more on exploration and development.

The depletion rate of 27½% is too high. Cut it to 20, 15, or 10%.

This is begging the question. A lower rate won't satisfy the critics. They'd be back at the next session to whittle away at the lower rate. As we've noted, the present rate probably already is too low to achieve an adequate return of capital. If it were lower, percentage depletion also would lose effectiveness as an exploration incentive. It would give oil men too little money to finance new drilling. Outside investors would fear other cuts. Uncertainty of their return piled on the normal risk of exploration would cool them on oil ventures. Exploration needs to be made more attractive to risk capital—not less.

Eliminate all deductions and grant an outright federal subsidy to encourage exploration.

Can you imagine what kind of drilling program would emerge if it depended on annual appropriations from Congress? What a boondoggle this opens up! The drilling decision-makers would be bureaucrats who are subject to political pressure and not fitted by training or position to take risks involved. Where would the savings be in this approach?

There are other arguments. None really new. All have been refuted time and time again. The fact they are being taken seriously is the big surprise.

It is especially surprising in view of the present low state of petroleum exploration. That's the new circumstance in the whole fight.

Our reserves of oil and gas are dwindling at a time they should be rising twice as fast. Spending on exploration should be doubled. Oil and gas now furnish 75% of our nation's energy. We're using petroleum at such a clip that consumption is expected to double by 1980.

Tampering with any policy that encourages exploration for petroleum is courting disaster. The facts speak just as clearly and loudly as ever against changing either the rate or principle of percentage depletion. Congress will serve the nation best by again refusing to change this policy.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted as follows:

To Mr. ROSTENKOWSKI (at the request of Mr. BOGGS), for today, on account of a death in the family.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

Mr. BROWN of California, for 60 minutes, today; to revise and extend his remarks and to include extraneous matter.

(The following Members (at the request of Mr. SEBELIUS); to revise and extend their remarks and include extraneous matter:)

Mr. LUJAN, for 5 minutes, on June 25, 1969.

Mr. BIESTER, for 10 minutes, on June 25, 1969.

Mr. HOSMER, for 15 minutes, on Friday, June 27, 1969.

(The following Members (at the request of Mr. PREYER of North Carolina); to revise and extend their remarks and include extraneous matter:)

Mr. GONZALEZ, for 15 minutes, today.

Mr. FARBSTEIN, for 30 minutes, on June 26.

Mr. DENT, for 60 minutes, on June 30.

Mr. LOWENSTEIN, for 60 minutes, on July 1.

EXTENSIONS OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. BURLESON of Texas and to include extraneous matter.

Mr. MICHEL and to include an article entitled "Anatomy of Loyalty," by Dr. Stanley Niehaus.

Mr. FISH to revise and extend his remarks and to include extraneous matter during debate on H.R. 7906.

Mr. GROSS.

(The following Members (at the request of Mr. SEBELIUS) and to include extraneous matter:)

Mr. DERWINSKI in two instances.

Mr. O'KONSKI.

Mr. FRELINGHUYSEN.

Mr. JOHNSON of Pennsylvania.

Mrs. HECKLER of Massachusetts in two instances.

Mr. SHRIVER in two instances.

Mr. MORSE in two instances.

Mr. HARVEY in two instances.

Mr. WYMAN in three instances.

Mr. ROBISON in two instances.

Mr. HALPERN.

Mr. SKUBITZ in four instances.

Mr. PELLY in three instances.

Mr. ASHBROOK.

Mr. TALCOTT in three instances.

Mr. MCKNEALLY in two instances.

Mr. HOSMER in two instances.

Mr. KEITH.

Mr. BUSH.

(The following Members (at the request of Mr. PREYER of North Carolina) and to include extraneous matter:)

Mr. CLAY in six instances.

Mr. RARICK in three instances.

Mr. BINGHAM in two instances.

Mr. HICKS in two instances.

Mr. DULSKI in two instances.

Mr. JACOBS.

Mr. PATTEN in two instances.

Mr. GONZALEZ in three instances.

Mr. NICHOLS in two instances.

Mr. FRASER.

Mr. RYAN in four instances.

Mr. EDWARDS of California.

Mr. PEPPER.

Mr. FEIGHAN in four instances.

Mr. ROONEY of New York.

Mr. JOELSON.

Mr. HANNA.

Mr. SCHEUER.

Mr. TUNNEY in three instances.

Mr. MACDONALD of Massachusetts.

Mr. VIGORITO.

Mr. FLYNT in two instances.

Mr. ZABLOCKI in two instances.

SENATE BILLS AND JOINT RESOLUTIONS REFERRED

Bills and Joint Resolutions of the Senate of the following titles were taken from the Speaker's table and, under the rule, referred as follows:

S. 38. An act to consent to the upper Niobrara River compact between the States of Wyoming and Nebraska; to the Committee on Interior and Insular Affairs.

S. 952. An act to provide for the appointment of additional district judges, and for other purposes; to the Committee on the Judiciary.

S.J. Res. 11. Joint resolution to provide for

the appointment of Robert Strange McNamara as Citizen Regent of the Board of Regents of the Smithsonian Institution; to the Committee on House Administration.

S.J. Res. 126. Joint resolution to increase the appropriation authorization for the food stamp program for fiscal 1970 to $750 million; to the Committee on Agriculture.

ENROLLED JOINT RESOLUTION SIGNED

Mr. FRIEDEL, from the Committee on House Administration, reported that that committee had examined and found truly enrolled a joint resolution of the House of the following title, which was thereupon signed by the Speaker:

H.J. Res. 790. Joint resolution making continuing appropriations for the fiscal year 1970, and for other purposes.

SENATE ENROLLED JOINT RESOLUTION SIGNED

The SPEAKER announced his signature to an enrolled joint resolution of the Senate of the following title:

S.J. Res. 123. Joint resolution to extend the time for the making of a final report by the Commission to Study Mortgage Interest Rates.

ADJOURNMENT

Mr. PREYER of North Carolina. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 6 o'clock and 45 minutes p.m.), the House adjourned until tomorrow, Thursday, June 26, 1969, at 12 o'clock noon.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

888. A letter from the Secretary, Export-Import Bank of the United States, transmitting a report on the amount of Export-Import Bank insurance and guarantees issued in May 1969, in connection with U.S. exports to Yugoslavia, pursuant to the provisions of the Export-Import Bank Act of 1945, as amended, and the applicable Presidential determination thereunder; to the Committee on Foreign Affairs.

889. A letter from the Comptroller General of the United States, transmitting a report of the study of the acquisition of peripheral equipment for use with automatic data processing systems; to the Committee on Government Operations.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. HALEY: Committee on Interior and Insular Affairs. H.R. 471. A bill to amend section 4 of the act of May 31, 1933 (48 Stat. 108); with amendment (Rept. No. 91-326). Referred to the Committee of the Whole House on the State of the Union.

Mr. FRIEDEL: Committee on House Administration. House Resolution 357. Resolution providing for an additional clerk for all House Members; with amendment (Rept. No. 91-327). Ordered to be printed.

Mr. COLMER: Committee on Rules. House Resolution 455. Resolution for consideration of H.R. 4229, an act to continue for a temporary period the existing suspension of duty on heptanoic acid (Rept. No. 91-328). Referred to the House Calendar.

PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. ADDABBO:

H.R. 12401. A bill to amend section 8336(c) of title 5, United States Code, to include the position of customs inspector in the category of hazardous occupations; to the Committee on Post Office and Civil Service.

By Mr. ESCH:

H.R. 12402. A bill to establish the calendar year as the fiscal year of the U.S. Government; to the Committee on Government Operations.

By Mr. FLYNT:

H.R. 12403. A bill to amend title 18 and title 28 of the United States Code with respect to the trial and review of criminal actions involving obscenity, and for other purposes; to the Committee on the Judiciary.

By Mr. HARVEY:

H.R. 12404. A bill to authorize the disposal of nickel from the national stockpile; to the Committee on Armed Services.

By Mr. KLUCZYNSKI:

H.R. 12405. A bill to amend title 39, United States Code, to extend to city, county, and State governments the third-class bulk mail rates for qualified nonprofit organizations; to the Committee on Post Office and Civil Service.

By Mr. MESKILL:

H.R. 12406. A bill to amend the Internal Revenue Code of 1954 to extend the head-of-household benefits to all unremarried widows and widowers and to all individuals who have attained age 21 and who have never been married or who have been separated or divorced for 3 years or more; to the Committee on Ways and Means.

By Mrs. MINK:

H.R. 12407. A bill to amend title 18, United States Code, to prohibit the establishment of emergency detention camps and to provide that no citizen of the United States shall be committed for detention or imprisonment in any facility of the U.S. Government except in conformity with the provisions of title 18; to the Committee on the Judiciary.

By Mr. MOSHER:

H.R. 12408. A bill to amend the Internal Revenue Code of 1954 to increase from $600 to $1,200 the personal income tax exemptions of a taxpayer (including the exemption for a spouse, the exemptions for a dependent, and the additional exemptions for old age and blindness); to the Committee on Ways and Means.

By Mr. MOSS:

H.R. 12409. A bill to amend the Fish and Wildlife Coordination Act to provide for the establishment of a Council on Environmental Quality, and for other purposes; to the Committee on Merchant Marine and Fisheries.

By Mr. MURPHY of New York:

H.R. 12410. A bill to amend chapter 13 of title 38, United States Code, to increase dependency and indemnity compensation for widows and children, and for other purposes; to the Committee on Veterans' Affairs.

H.R. 12411. A bill to modify the reporting requirement and establish additional income exclusions relating to pension for veterans and their widows, to liberalize the bar to payment of benefits to remarried widows of veterans, to liberalize the oath requirement for hospitalization of veterans, and for other purposes; to the Committee on Veterans' Affairs.

H.R. 12412. A bill to amend title 38 of the United States Code to liberalize the provisions relating to payment of pension, and for other purposes; to the Committee on Veterans' Affairs.

H.R. 12413. A bill to amend chapter 19 of title 38, United States Code, in order to increase from $10,000 to $15,000 the amount of servicemen's group life insurance for members of the uniformed services; to the Committee on Veterans' Affairs.

By Mr. PODELL:

H.R. 12414. A bill to amend chapter 137, title 10, United States Code, to limit, and to provide more effective control over, the use of Government production equipment by private contractors under contracts entered into by the Department of Defense and certain other agencies, and for other purposes; to the Committee on Armed Services.

H.R. 12415. A bill to amend title 18, United States Code, to prohibit the establishment of emergency detention camps and to provide that no citizen of the United States shall be committed for detention or imprisonment in any facility of the U.S. Government except in conformity with the provisions of title 18; to the Committee on the Judiciary.

By Mr. PODELL (for himself, Mr. DON H. CLAUSEN, Mr. CLEVELAND, Mr. CULVER, Mr. DOWNING, Mr. FRASER, Mrs. HANSEN of Washington, Mr. KEE, Mr. MANN, Mr. MOLLOHAN, and Mr. STAFFORD):

H.R. 12416. A bill to amend the Legislative Reorganization Act of 1946 to provide for annual reports to the Congress by the Comptroller General concerning certain price increases in Government contracts and certain failures to meet Government contract completion dates; to the Committee on Government Operations.

By Mr. RHODES:

H.R. 12417. A bill to amend the Communications Act of 1934 to establish orderly procedures for the consideration of applications for renewal of broadcast licenses; to the Committee on Interstate and Foreign Commerce.

By Mr. SAYLOR (for himself, Mr. SKUBITZ, Mr. ZION, Mr. BYRNE of Pennsylvania, Mr. CAMP, Mr. EVINS of Tennessee, Mr. EDWARDS of Louisiana, Mr. BURTON of California, Mr. MACDONALD of Massachusetts, Mr. SEBELIUS, Mr. WATKINS, Mr. ANDERSON of California, Mr. CARTER, Mr. COUGHLIN, Mr. DULSKI, Mr. ROSENTHAL, Mr. LUKENS, Mr. ADAMS, Mr. OBEY, Mr. ESHLEMAN, Mr. REUSS, Mr. LONG of Louisiana, Mr. FOUNTAIN, Mr. SMITH of California, and Mr. HUNT):

H.R. 12418. A bill to amend the Internal Revenue Code of 1954 to increase from $600 to $1,000 the personal income tax exemptions of a taxpayer (including the exemption for a spouse, the exemptions for a dependent, and the additional exemptions for old age and blindness); to the Committee on Ways and Means.

By Mr. TIERNAN:

H.R. 12419. A bill to expedite delivery of special delivery mail, and for other purposes; to the Committee on Post Office and Civil Service.

H.R. 12420. A bill to amend the Internal Revenue Code of 1954 to exempt from income tax retirement annuities and pensions paid by the United States to its employees; to the Committee on Ways and Means.

H.R. 12421. A bill to amend the Internal Revenue Code of 1954 so as to allow an additional income tax exemption for a dependent who is mentally retarded; to the Committee on Ways and Means.

By Mr. ALEXANDER:

H.R. 12422. A bill to amend the Agricultural Adjustment Act, as reenacted and amended by the Agricultural Marketing

Agreement Act of 1937, as amended, and for other purposes; to the Committee on Agriculture.

By Mr. BENNETT:

H.R. 12423. A bill to amend chapter 55 of title 10, United States Code, to provide health benefits for the dependents of war veterans who die of a service-connected disability; to the Committee on Armed Services.

H.R. 12424. A bill to authorize the establishment of the Revolution's Southernmost Battlefields National Park in the State of Florida; to the Committee on Interior and Insular Affairs.

By Mr. BIESTER (for himself, Mr. KUYKENDALL, Mr. CORMAN, Mr. HANSEN of Idaho, Mr. ADAIR, Mr. ADDABBO, Mr. ANDERSON of California, Mr. ANDERSON of Illinois, Mr. ANDREWS of Alabama, Mr. ANNUNZIO, Mr. ASHLEY, Mr. BLANTON, Mr. BOLAND, Mr. BRASCO, Mr. BRAY, Mr. BROWN of California, Mr. BUCHANAN, Mr. BUTTON, Mr. CARTER, Mrs. CHISHOLM, Mr. CLEVELAND, Mr. CORBETT, Mr. COUGHLIN, Mr. DERWINSKI, and Mr. DOWNING):

H.R. 12425. A bill to amend the Public Health Service Act so as to add to such act a new title dealing especially with kidney disease and kidney-related diseases; to the Committee on Interstate and Foreign Commerce.

By Mr. ADAMS (for himself, Mr. DULSKI, Mr. EILBERG, Mr. ESCH, Mr. FISH, Mr. FRIEDEL, Mr. FULTON of Pennsylvania, Mr. FULTON of Tennessee, Mr. GALLAGHER, Mr. HASTINGS, Mr. HAWKINS, Mr. HAYS, Mr. HOGAN, Mr. HUNGATE, Mr. HUNT, Mr. KEE, Mr. KEITH, Mr. KING, Mr. LEGGETT, Mr. MATSUNAGA, Mr. MCCARTHY, Mr. MCCLOSKEY, Mr. MCDADE, Mrs. MINK, and Mr. MOORHEAD):

H.R. 12426. A bill to amend the Public Health Service Act so as to add to such act a new title dealing especially with kidney disease and kidney-related diseases; to the Committee on Interstate and Foreign Commerce.

By Mr. BROTZMAN (for himself, Mr. MORGAN, Mr. MURPHY of New York, Mr. OLSEN, Mr. PATTEN, Mr. PELLY, Mr. PEPPER, Mr. PETTIS, Mr. PHILBIN, Mr. PODELL, Mr. PRICE of Illinois, Mr. RAILSBACK, Mr. RIEGLE, Mr. RHODES, Mr. ROSENTHAL, Mr. RUPPE, Mr. SCHEUER, Mr. STRATTON, Mr. TAFT, Mr. THOMPSON of Georgia, Mr. TIERNAN, Mr. TUNNEY, Mr. VIGORITO, Mr. WALDIE, and Mr. WHALLEY):

H.R. 12427. A bill to amend the Public Health Service Act so as to add to such act a new title dealing especially with kidney disease and kidney-related diseases; to the Committee on Interstate and Foreign Commerce.

By Mr. KYROS (for himself, Mr. WHITEHURST, Mr. WRIGHT, Mr. YATES, and Mr. YATRON):

H.R. 12428. A bill to amend the Public Health Service Act so as to add to such act a new title dealing especially with kidney disease and kidney-related diseases; to the Committee on Interstate and Foreign Commerce.

By Mr. KARTH:

H.R. 12429. A bill to amend the Atomic Energy Act of 1954 to make it clear that, in its agreement with a State for the control of radiation hazards from nuclear byproduct materials or other nuclear materials, the Atomic Energy Commission shall permit such State to impose standards which are more restrictive than its own standards for the regulation of such materials; to the Joint Committee on Atomic Energy.

By Mr. POAGE:

H.R. 12430. A bill to maintain farm income, stabilize prices, assure adequate food, reduce surpluses, lower Government costs, and for other purposes; to the Committee on Agriculture.

By Mr. PODELL (for himself and Mr. GARMATZ):

H.R. 12431. A bill to amend the Legislative Reorganization Act of 1946 to provide for annual reports to the Congress by the Comptroller General concerning certain price increases in Government contracts and certain failures to meet Government contract completion dates; to the Committee on Government Operations.

By Mr. QUILLEN:

H.R. 12432. A bill to amend chapter 83, title 5, United States Code, to eliminate the reduction in the annuities of employees or Members who elected reduced annuities in order to provide a survivor annuity if predeceased by the person named as survivor and permit a retired employee or Member to designate a new spouse as survivor if predeceased by the person named as survivor at the time of retirement; to the Committee on Post Office and Civil Service.

H.R. 12433.A bill to provide increased annuities under the Civil Service Retirement Act; to the Committee on Post Office and Civil Service.

By Mr. RAILSBACK:

H.R. 12434. A bill to amend title 28, United States Code, to prohibit Federal judges from receiving compensation other than for the performance of their judicial duties, except in certain instances, and to provide for the disclosure of certain financial information; to the Committee on the Judiciary.

By Mr. REUSS:

H.R. 12435. A bill to amend the Federal Water Pollution Control Act to protect the navigable waters of the United States from further pollution by requiring that synthetic petroleum-based detergents manufactured in the United States or imported into the United States be free of phosphorus; to the Committee on Public Works.

By Mr. RYAN:

H.R. 12436. A bill to provide for the establishment of the New York Harbor National Seashore in the States of New York and New Jersey, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. TEAGUE of Texas (by request):

H.R. 12437. A bill to amend title 38 of the United States Code to provide for appointment of certain persons in the Nursing Service in the Department of Medicine and Surgery of the Veterans' Administration, and for other purposes; to the Committee on Veterans' Affairs.

By Mr. WHITEHURST:

H.R. 12438. A bill to protect interstate and foreign commerce by prohibiting the movement in such commerce of horses which are "sored," and for other purposes; to the Committee on Interstate and Foreign Commerce.

By Mr. JOHNSON of California:

H.R. 12439. A bill to provide for the disposition of community areas established for reclamation purposes on withdrawn or acquired lands of the United States, and for other purposes; to the Committee on Interior and Insular Affairs.

By Mr. MCMILLAN (for himself, Mr. BROWN of Michigan, Mr. BLACKBURN, Mr. CARTER, Mr. BERRY, Mr. JOHNSON of Pennsylvania, Mr. LEGGETT, Mr. HICKS, Mr. BOW, Mr. MIZE, Mr. ST GERMAIN, Mr. STANTON, Mr. ANDERSON of California, Mr. GALIFIANAKIS, Mr. REES, and Mr. ASHLEY):

H.R. 12440. A bill to provide for the more efficient development and improved management of national forest commercial forest land, to establish a high-timber-yield fund, and for other purposes; to the Committee on Agriculture.

By Mr. STEIGER of Arizona:

H.R. 12441. A bill to increase to 5 years the maximum term for which broadcasting station licenses may be granted; to the Committee on Interstate and Foreign Commerce.

By Mr. TUNNEY (for himself, Mr. VAN DEERLIN, Mr. WALDIE, and Mr. ROYBAL):

H.R. 12442. A bill making an appropriation to the Secretary of the Treasury to enable him to appoint additional customs agents and inspectors for Calexico and San Diego, Calif.; to the Committee on Appropriations.

H.R. 12443. A bill to provide for a 1-year study by the Attorney General, together with the Secretary of Health, Education, and Welfare and the Secretary of the Treasury, of the extent and nature of the problem of illegal importation of narcotics and dangerous drugs into the United States, and for other purposes; to the Committee on Ways and Means.

By Mr. UDALL:

H.R. 12444. A bill to designate the Mount Baldy Wilderness, the Pine Mountain Wilderness, and the Sycamore Canyon Wilderness within certain national forests in the State of Arizona; to the Committee on Interior and Insular Affairs.

By Mr. DORN:

H.J. Res. 796. Joint resolution proposing an amendment to the Constitution relative to qualifications and tenure of members of the U.S. Supreme Court; to the Committee on the Judiciary.

By Mr. JOHNSON of California:

H.J. Res. 797. Joint resolution authorizing the President to proclaim the period of October 5 to October 12, 1969, as "Angelo Noce Week"; to the Committee on the Judiciary.

By Mr. BOLAND (for himself, Mr. CLAY, Mr. CULVER, Mr. FULTON of Pennsylvania, Mrs. HECKLER of Massachusetts, Mr. LOWENSTEIN, Mr. OTTINGER, and Mr. POWELL):

H. Con. Res. 295. Concurrent resolution on urgency of arms control negotiations; to the Committee on Foreign Affairs.

By Mr. DELLENBACK:

H. Res. 456. Resolution urging the President to resubmit to the Senate for ratification the Geneva Protocol of 1925 banning the first use of gas and bacteriological warfare; to the Committee on Foreign Affairs.

MEMORIALS

Under clause 4 of rule XXII.

229. The SPEAKER presented a memorial of the Legislature of the State of Maine, relative to revision of the present system of administering Federal grants, which was referred to the Committee on Ways and Means.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. DERWINSKI:

H.R. 12445. A bill to confer U.S. citizenship posthumously upon Guadalupe Esparza-Montoya; to the Committee on the Judiciary.

By Mr. KLUCZYNSKI:

H.R. 12446. A bill to confer U.S. citizenship posthumously upon Guadalupe Esparza-Montoya; to the Committee on the Judiciary.

By Mrs. MINK:

H.R. 12447. A bill for the relief of James H. Kane; to the Committee on the Judiciary.

By Mr. REID of New York:

H.R. 12448. A bill for the relief of Sakiko O'Brien; to the Committee on the Judiciary.

By Mr. SANDMAN:

H.R. 12449. A bill for the relief of Angelo Ciro, Benedetta Ciro, and Francesca Ciro; to the Committee on the Judiciary.

By Mr. VAN DEERLIN:

H.R. 12450. A bill for the relief of Amparo Coronado Vieuda de Pena and her three minor children, Yolanda Pena, Marisela Pena, and Lorenzo Pena; to the Committee on the Judiciary.